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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

S2 14 Cr. 810 (CM)

5 MOSHE MIRILISHVILI,

6 Defendant.

Trial

7 -----x

8 New York, N.Y.

9 March 15, 2016

10:00 a.m.

10 Before:

11 HON. COLLEEN McMAHON,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the

16 Southern District of New York

EDWARD DISKANT

17 BROOKE CUCINELLA

Assistant United States Attorneys

18 HENRY MAZUREK

19 WAYNE GOSNELL

Attorneys for Defendant

20 ALSO PRESENT: MICHAEL MULLER, DEA

ELIZABETH JOYNES, Paralegal

21 MICHAEL DOMANICO, Paralegal

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1 (Trial resumed; jury not present)

2 MR. MAZUREK: Your Honor, there is one issue. There  
3 is a document the government objects to that we would like to  
4 put into evidence.

5 THE COURT: Then introduce it. Why should I deal with  
6 that now?

7 MR. MAZUREK: It's not coming through a witness,  
8 unless I have to call for custodial purposes. I think the  
9 government's objection is a business record objection. It's a  
10 set of documents that were seized at the medical office at the  
11 time of the government's search.

12 THE COURT: Well, why don't you give them to me, and I  
13 will look at them.

14 MR. MAZUREK: I handed them up yesterday. 402-A.  
15 It's a stack of documents.

16 MS. CUCINELLA: The objection is actually a relevance  
17 objection.

18 THE COURT: OK. I'm going to deal with this when this  
19 witness is off the stand. OK? I'd like to get her back to her  
20 normal pursuits. She is not involved in this.

21 MR. MAZUREK: OK.

22 (Continued on next page)  
23  
24  
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Warfield - cross

1 (Jury present)

2 THE COURT: Hi, everybody.

3 Doctor, have a seat. OK. Dr. Warfield is still on  
4 cross.

5 Ma'am, you are still under oath. You may continue.

6 CAROL WARFIELD, resumed.

7 CROSS EXAMINATION (Continued)

8 BY MS. CUCINELLA:

9 Q. Good morning, Dr. Warfield.

10 A. Good morning.

11 Q. Yesterday you testified that Dr. Mirilishvili was acting  
12 legitimately when he wrote over 13,000 oxycodone prescriptions;  
13 is that right?

14 A. Correct.

15 Q. Now, that conclusion is based on the medical records you  
16 reviewed; is that right?

17 A. And the transcript, yes.

18 Q. And you would agree that if the documents you relied on to  
19 arrive at your conclusions were inaccurate or somehow false,  
20 that would affect your opinion, right?

21 A. Possible.

22 Q. It's possible? If the documents you relied on were false,  
23 it may affect your opinion?

24 A. Yes.

25 Q. OK. Because it's your view that you have to rely on the

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Warfield - cross

1 medical record, right?

2 A. Yes, I relied on the medical records.

3 Q. OK. So if what is in them isn't true, then you can't rely  
4 on that; is that fair?

5 A. Well, it depends on the physician's viewpoint. From the  
6 physician's viewpoint I'm talking about.

7 Q. OK. Do you remember testifying in a trial in the Southern  
8 District of Florida, United States America v. Alishagan?

9 A. Yes.

10 Q. And do you remember testifying there that: Obviously I  
11 have to rely on the medical record.

12 A. Yes.

13 Q. And if you're telling me what is in the medical record  
14 isn't true, then, you know, obviously I can't rely on that if  
15 that's what you're asking.

16 Do you remember testifying to that?

17 A. Yes.

18 Q. I asked you yesterday about an individual named Damon  
19 Leonard, and you testified you didn't know who he was, right?

20 A. Correct.

21 Q. Have you ever met Jomaris Javier?

22 A. No.

23 Q. Have you ever met Abraham Correa.

24 A. No.

25 Q. Have you ever met Ray Williams?

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Warfield - cross

1 A. No.

2 Q. What about Joseph Gray?

3 A. No.

4 Q. You have never been to the defendant's clinic on 162nd  
5 Street, right?

6 A. That's correct.

7 Q. Dr. Warfield, you would agree with me that oxycodone is a  
8 highly addictive pain killer, right?

9 A. Any of the opiates are.

10 THE COURT: But she didn't ask any of the opiates.

11 A. Yes.

12 Q. Oxycodone is a highly addictive painkiller.

13 A. Yes.

14 Q. If you are treating someone and they are purportedly taking  
15 oxycodone, especially high doses of oxycodone regularly, you  
16 would need to taper them off of that, right?

17 A. No.

18 Q. You can just stop them cold turkey?

19 A. It depends. You didn't say anything about stopping them.  
20 Could you ask the question again.

21 Q. Sure. If you are treating someone and they are purportedly  
22 taking oxycodone, especially high doses of it regularly, if you  
23 are going to stop the treatment of oxycodone, you need to taper  
24 them off, right?

25 A. It depends on the situation.

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Warfield - cross

1 Q. But you can't just cut them off cold turkey; is that fair?

2 A. Depends on the situation.

3 THE COURT: So sometimes you can, sometimes you can't.

4 THE WITNESS: Yes.

5 THE COURT: OK.

6 Q. In what situations can you just cut a patient off cold  
7 turkey?

8 A. Well, again depends on how long the patient has been taking  
9 the drug. It depends on whether you think the patient really  
10 is taking the drug. If you suspected that someone was selling  
11 the drug, for example, and you were prescribing --

12 Q. I'm going to stop you. My question was if you believe that  
13 they're taking the oxycodone, can you just cut them off?

14 A. Again, it depends.

15 Q. On what?

16 A. I was just answering that.

17 THE COURT: No. But we don't want to talk about  
18 people who are selling the drug, distributing the drug, not  
19 taking the drug. Her question is very clearly focused on  
20 people who are taking the drug.

21 A. For people who are taking the drug, it depends on how long  
22 they've been on the drug, it depends on what they're going to  
23 do after they leave you. Some physicians don't do drug  
24 detoxification, so they send patients elsewhere, or the patient  
25 goes elsewhere for drug detoxification. So it very much

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Warfield - cross

1 depends on a number of things.

2 Q. But you would agree with me that something needs to happen  
3 like a detoxification program. You can't just cut someone off  
4 if you believe they're taking oxycodone, right?

5 A. Again, it depends.

6 Q. OK. It depends if you're going to do detoxification or if  
7 you're going to send them to someone else to do the  
8 detoxification; is that fair?

9 A. Or you may not send them to someone else; they may go  
10 somewhere else and do detoxification, or it depends on the dose  
11 they are on, it depends on how long. It's not a cut and dry  
12 thing. It depends.

13 Q. In most circumstances that person would need to be  
14 detoxified; is that fair?

15 A. In many circumstances.

16 Q. Now, you are here today to testify that Dr. Mirilishvili  
17 was legitimately practicing medicine, correct?

18 A. That's my testimony.

19 Q. You have testified before in approximately six criminal  
20 trials, is that right? Or is it more than that now?

21 A. That sounds right.

22 Q. And in each time in those trials you testified on behalf of  
23 the defendant doctor, correct?

24 A. I've testified for the government before also.

25 Q. And in the six criminal trials you testified in, have you

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Warfield - cross

1 ever testified on behalf of the government?

2 A. I guess I'm not a lawyer, so I don't know which were  
3 criminal and which weren't criminal. I can just tell you I  
4 have testified for the government before. I don't know what  
5 you would call them.

6 Q. You don't know if you were testifying in criminal trials or  
7 civil trials? Is that your testimony?

8 A. I guess --

9 THE COURT: I think we don't need to argue with the  
10 witness.

11 MS. CUCINELLA: OK, I'll move on.

12 Q. In most of the criminal trials you testified in, is it fair  
13 to say that you were testifying on behalf of the defendant  
14 doctor?

15 A. Yes.

16 Q. OK. And that's because you are an advocate for a doctor's  
17 right to prescribe opiates, right?

18 A. No.

19 Q. Here you talked about the legitimate practice of medicine,  
20 right?

21 A. Yes.

22 Q. It's your view that in certain circumstances it can be the  
23 legitimate practice of medicine -- again under certain  
24 circumstances -- if a doctor meets a patient for an initial  
25 patient visit in a Starbucks, right?



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Warfield - cross

1 A. For an initial patient visit?

2 Q. Yes.

3 A. No, not for an initial patient visit.

4 Q. Do you recall testifying in United States v. Cadet?

5 A. Correct, that wasn't an initial visit.

6 Q. Give me one moment.

7 THE COURT: The question was do you recall testifying  
8 in that case?

9 THE WITNESS: Yes.

10 THE COURT: Fine. Then that's the answer. The rest  
11 of it can be stricken.

12 Q. OK. So if it's not an initial patient visit, it's  
13 legitimate medicine to meet a patient in a Starbucks.

14 A. In a very rare circumstance, which that was.

15 Q. OK. And you would also agree that it's your view that it's  
16 legitimate medicine to conduct a random urine drug test in a  
17 Starbucks bathroom, correct?

18 A. In an unbelievably rare circumstance where someone's office  
19 was closed down and they needed to take care of a patient, I  
20 would say that's OK.

21 Q. But that was your view, right?

22 A. Yes.

23 Q. And it's also your view that there is no need for a doctor  
24 to be aware of what is going on outside the treatment room in  
25 order for you to find that a doctor is practicing legitimate

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Warfield - cross

1 medicine, right?

2 A. A doctor often doesn't know what's going on outside.

3 Q. OK. And do you recall testifying that if a security guard  
4 was standing outside the treatment room screaming at the  
5 patients about shooting up, that it wouldn't change your  
6 opinion of whether a doctor was appropriately prescribing  
7 oxycodone?

8 A. Well, that's I guess --

9 THE COURT: Yes or no.

10 A. Ask the question again.

11 Q. Sure. Testifying that if a security guard was standing  
12 outside a treatment room screaming at the patients about  
13 shooting up, that it wouldn't change your opinion of whether a  
14 doctor was appropriately prescribing oxycodone.

15 A. Well, I'd have to know more about that to answer.

16 THE COURT: The question was did you so testify?

17 MS. CUCINELLA: It was.

18 THE COURT: Did you so testify?

19 THE WITNESS: I don't remember. I'd have to know  
20 more.

21 THE COURT: She does not remember. So why don't we  
22 refresh her recollection.

23 MS. CUCINELLA: I'm going to refresh your  
24 recollection.

25 THE COURT: Let's see if this jogs your memory as to

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Warfield - cross

1 whether you said this on another occasion.

2 THE WITNESS: May I have a minute to check this?

3 THE COURT: Of course. Take as long as you like.

4 THE WITNESS: OK. This isn't what you just asked me.

5 THE COURT: Excuse me. Excuse me. The question,  
6 ma'am -- and you are an intelligent woman.

7 THE WITNESS: Thanks.

8 THE COURT: A highly trained physician. So you can  
9 understand what she is saying.

10 THE WITNESS: Yes.

11 THE COURT: You are not to fight with her. You are  
12 not here to try to win the case. You are not to try to score  
13 points. That's not your job. Your job is to answer the  
14 question you are asked.

15 Her question was: Did you so state on another  
16 occasion? Actually her real question was looking at that  
17 document -- which I'm going to take away from you, please --  
18 does that jog your memory that you so testified on another  
19 occasion? Either it jogs your memory that you did, or it  
20 doesn't jog your memory that you did. That's the question.

21 THE WITNESS: No.

22 THE COURT: It does not.

23 THE WITNESS: No.

24 Q. Do you recall testifying -- pardon me. Do you recall being  
25 asked the question:

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Warfield - cross

1 "Q. Well, assume that the head of security was standing in the  
2 front reading room screaming at the patients about if I find  
3 you shooting up I'm going to take your money and throw you out  
4 of here. Would that change your opinion?"

5 And giving the answer:

6 "A. It wouldn't change my opinion of the way that Dr. Cadet  
7 treated her patients. Whatever else was going on outside of  
8 there would not change my opinion."

9 Do you remember so testifying?

10 A. Yes.

11 THE COURT: Do you want to object? Please get up on  
12 your feet and say objection.

13 MR. MAZUREK: Sorry.

14 Q. Do you recall also testifying that if large amounts of cash  
15 were maintained in garbage cans in open view, that that also  
16 wouldn't affect your view of a doctor's treatment of her  
17 patients?

18 A. Correct.

19 Q. You have also testified previously, Dr. Warfield, that  
20 there is simply no way to tell if a patient is lying to a  
21 doctor, correct?

22 A. No way to reliably tell, yes.

23 Q. Do you recall testifying that you've reviewed all the  
24 literature, and try as a doctor might a doctor can't tell if a  
25 patient is trying to fool them?

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Warfield - redirect

1 A. Reliably, correct.

2 MS. CUCINELLA: One moment.

3 Nothing further.

4 REDIRECT EXAMINATION

5 BY MR. MAZUREK:

6 Q. Good morning, Dr. Warfield.

7 A. Good morning.

8 Q. You were just asked questions on cross-examination about  
9 the number of prescriptions that Dr. Mirilishvili wrote. Do  
10 you recall those successive questions?

11 A. Yes.

12 Q. Can you make a determination merely based on the number of  
13 prescriptions a pain doctor writes to determine whether they  
14 were acting outside the usual course of medical practice?

15 A. No, absolutely not.

16 Q. You were also asked questions relating to false documents.

17 If we could put on the screen what has been admitted  
18 into evidence as Government Exhibit 1205, and turn to page 2.

19 Is that on everyone's screen?

20 Do you recall reviewing this document that's on your  
21 screen within the patient file of a patient by the name of Jose  
22 Miguel Lantigua?

23 A. Yes.

24 Q. Did this document appear to you to be an MRI report?

25 A. Yes.

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Warfield - redirect

1 Q. And based on your review of the document, what does this  
2 report seem to indicate?

3 A. Give me a minute just to read it: This would indicate that  
4 this patient had a disk which was pushing on a nerve at two  
5 different levels in the spinal area, which could cause severe  
6 pain.

7 Q. And does this appear to you to be a document that is issued  
8 by a radiologist, based on your experience?

9 A. Yes.

10 Q. Is this the kind of document that you would rely upon in  
11 making a medical judgment?

12 A. Definitely, yes.

13 Q. In your opinion, in the review of this particular file, was  
14 this document a factor that you used in making a determination  
15 whether the doctor's treatment of Mr. Lantigua was appropriate?

16 A. Yes.

17 Q. Did you have any idea that this document was prepared by  
18 the DEA and not Barnabas Health?

19 A. No, it looks like a real document to me; it looks like a  
20 typical document.

21 Q. You were asked on cross-examination about the patterns of  
22 Dr. Mirilishvili's prescriptions. Based on your medical  
23 experience and training, is it within the usual course of  
24 medical practice for a doctor to continue a treatment, a set of  
25 medicine treatment, if the patient is informing the doctor that

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Warfield - redirect

1 they are performing well under that treatment?

2 A. Yes, that would be one of the reasons you would continue  
3 the medications.

4 Q. You were asked a lot of questions on cross-examination  
5 about your opinion relating to whether Dr. Mirilishvili's  
6 prescriptions and the review of the files indicated that he was  
7 still working within the usual course of medical practice. Do  
8 you remember those questions?

9 A. Yes.

10 Q. Would you agree with me if I said that there is a big range  
11 of types of practices that a doctor may have in the usual  
12 course of medical practice?

13 A. No question, there are many, many different types of  
14 practices.

15 Q. And in terms of the level of care that a doctor gives  
16 within that range, could that go from the best possible down to  
17 he could be doing better? Is that still within the usual  
18 course?

19 A. Yes. There are lots of different practices and ways to  
20 practice that are all within the usual course.

21 Q. And can you make a determination based solely on numbers,  
22 just the numbers of patients and the numbers of prescriptions  
23 filed, can you make a determination based solely on that that a  
24 doctor is acting outside of the usual course?

25 A. Absolutely not.

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1 Q. And every day in this country, it's your experience that  
2 pain doctors are prescribing dosages of oxycodone similar to  
3 those that you found in these files?

4 A. Yes.

5 MR. MAZUREK: I have nothing further.

6 THE COURT: Anything else?

7 MS. CUCINELLA: Not from the government.

8 THE COURT: I'm truly sorry that we could not have  
9 finished that yesterday, but I hope you had an enjoyable  
10 evening in New York.

11 THE WITNESS: Thank you.

12 (Witness excused)

13 THE COURT: Mr. Mazurek?

14 MR. MAZUREK: Yes, Judge. There are just some  
15 documents that the defense wishes to offer in evidence.

16 THE COURT: I'm going to take them back to the robing  
17 room for a second. Stand up for a minute.

18 (Continued on next page)



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1 (In the robing room)

2 THE COURT: OK. So these look like a bunch of  
3 documents from the 162nd Street clinic, like forms that were  
4 filled out on various people who came to the doctor.

5 MR. MAZUREK: Yes. And, your Honor, they were seized  
6 pursuant to the search warrant.

7 THE COURT: I know what they were. I just need to  
8 know why the government doesn't think they are admissible.

9 MR. DISKANT: I think our concern is that they're not  
10 completed by the defendant; they pertain to a subject that's  
11 not of particular relevance to the case; they pertain to  
12 patients and activity that there has not really been any  
13 witness testimony about.

14 THE COURT: Well, I see, these were done by the  
15 physical therapist? Somebody would have to testify to  
16 authenticate these. Someone would have to explain what they  
17 were and who did them.

18 MR. MAZUREK: Judge --

19 THE COURT: We don't even know the physical  
20 therapist's name. I'm sorry.

21 MR. MAZUREK: Well, Judge, DM 402, which is one of  
22 these sheets, was already admitted into evidence and  
23 authenticated by Damon Leonard as physical therapist sheets  
24 that were kept at the office.

25 THE COURT: Which one is 402? I have 402-A here.

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1 That's all I have.

2 MR. MAZUREK: 402 is just a single sheet of the 402-A  
3 compilation.

4 THE COURT: Could I have a copy of DX 402? I don't  
5 have DX 402 here. I don't have it. I don't have the document  
6 that's been admitted into evidence.

7 DEPUTY COURT CLERK: I won't have that.

8 THE COURT: Where is the document? Did the government  
9 introduce it?

10 MR. MAZUREK: No, I introduced it through Damon  
11 Leonard.

12 THE COURT: With no objection.

13 MS. CUCINELLA: It was over objection.

14 MR. MAZUREK: But it was admitted.

15 THE COURT: I see. So I didn't understand what was  
16 going on.

17 MR. MAZUREK: Judge, he laid the foundation as to what  
18 it was; he was the office manager.

19 THE COURT: Where is the transcript?

20 DEPUTY COURT CLERK: What day?

21 MR. MAZUREK: It was Damon Leonard's  
22 cross-examination.

23 THE COURT: You're not prepared to show me the  
24 transcript? Did you come back here to argue this or not?

25 MR. MAZUREK: I don't have a copy of the transcript.

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1 MS. CUCINELLA: There are certain of these documents  
2 that are also included in the patient files that were entered  
3 into evidence through stipulation, and we would argue that  
4 those are the relevant ones, and they came in already by  
5 stipulation through the patient files. So, to the extent that  
6 these are other random ones that were collected in the  
7 office --

8 THE COURT: Look, I assume that the government is  
9 going to argue -- at least I always assumed the government was  
10 going to argue that the issue here isn't whether the doctor had  
11 some legitimate patients in the course of this practice, and  
12 you don't know anything about who these people are, or they're  
13 not the people who are the subject of the indictment. So, OK,  
14 he is trying to prove that the --

15 It is clearly the case, folks, that you can be  
16 operating a legitimate medical practice and you can write  
17 prescriptions that are for no medical purpose and are outside  
18 the scope of a legitimate medical practice.

19 So, if this is being offered to prove that the man was  
20 running a legitimate medical practice, you're perfectly free to  
21 point out the fact that these are not the people who are the  
22 subject of the indictment. All right? You're perfectly free  
23 to do that. I'm sorry I didn't quite understand what the  
24 defense was doing when they got this document in, but I think  
25 I'll let them put it in, and I think I'll let you argue.

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1 Because the case you have put on -- if I've heard it  
2 correctly -- is not a case of every single prescription that  
3 this man wrote from 162nd Street was in fact a prescription for  
4 no legitimate medical purpose. I didn't hear that.

5 MR. MAZUREK: I heard that --

6 THE COURT: I didn't hear that.

7 MR. MAZUREK: -- through the charts. I mean they've  
8 put in all of these charts and numbers and saying 15,000  
9 scripts, it was all a sham, every single one. I mean that is  
10 what they opened on.

11 THE COURT: No, they did not open on that, but it will  
12 be interesting to hear the closings.

13 I will let you get them in. OK?

14 MR. MAZUREK: I think the remaining documents you  
15 don't have objections to. DM 403, DM 606, and DM 607.

16 MS. CUCINELLA: Fine.

17 THE COURT: OK. So let's go do this on the record. I  
18 thought this was going to go on a little longer, of course, so  
19 I've been messing with the charge. But, fine, we will just do  
20 it while the jurors are sitting in the back. OK.

21 MR. MAZUREK: So how are we going to proceed now?

22 THE COURT: You are going to introduce your documents,  
23 you are going to rest. Do you have a rebuttal case?

24 MS. CUCINELLA: We do not.

25 THE COURT: OK. Then we are going to have a charge

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conference.

(Continued on next page)

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(In open court)

THE COURT: OK. The defense wants to introduce some exhibits?

MR. MAZUREK: Yes, your Honor. The defense seeks to offer what has been premarked for identification as DM 402-A.

THE COURT: The government objects. The objection is overruled. It's admitted.

(Defendant's Exhibit 402-A received in evidence)

MR. MAZUREK: May I just publish it on the screen, your Honor?

THE COURT: Sure. And this is a multi-page document.

MR. MAZUREK: And this is a multi-page document.

THE COURT: There are a number of pages that look like this, ladies and gentlemen.

MR. MAZUREK: Defense offers DM 403 into evidence.

THE COURT: Any objection?

MS. CUCINELLA: No objection.

THE COURT: Admitted.

(Defendant's Exhibit 403 received in evidence)

MR. MAZUREK: If we may publish that.

The defense offers what has been premarked for identification as DM 606.

THE COURT: Any objection?

MS. CUCINELLA: No objection.

MR. MAZUREK: And if we may publish that. This is a

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1 patient file for Tawanda Esther. It's again a multi-page  
2 document.

3 (Defendant's Exhibit 606 received in evidence)

4 MR. MAZUREK: And the defense offers DM 607.

5 MR. DISKANT: No objection.

6 MS. CUCINELLA: No objection.

7 THE COURT: Admitted.

8 (Defendant's Exhibit 607 received in evidence)

9 MR. MAZUREK: And if we may publish that. This is a  
10 patient file for a patient by the name of Angel Hernandez.  
11 Again, it's a multi-page document.

12 With that, your Honor, the defense rests.

13 (Continued on next page)

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1 THE COURT: Does the government wish to put on any  
2 rebuttal case?

3 MS. CUCINELLA: No, your Honor.

4 THE COURT: Ladies and gentlemen, we have heard all of  
5 the evidence. We wouldn't have broken yesterday no matter how  
6 tired they were if I thought that was all that was going to be.  
7 But I will tell you it not infrequently happens when we take a  
8 break and the lawyer has overnight to think about it, it gets  
9 shorter the next morning.

10 I need to talk to the lawyers now about the charge.  
11 What I want you to do is, I want you to take half an hour, take  
12 a coffee break. I want you to run out to Starbucks or  
13 something and be back here in the jury room in half an hour.  
14 Don't discuss the case. Keep an open mind.

15 (Jury not present)

16 THE COURT: Do we have motions? Do we have defense  
17 motions? We should get that on the record first.

18 MR. MAZUREK: Yes, your Honor. We renew our motion  
19 that we made at the end of the government's case with respect  
20 to insufficiency of evidence as to Counts One, Two, and Three.

21 Again, just to specify, with respect specifically to  
22 the substantive counts, I think now that we have the additional  
23 testimony of Dr. Warfield to rebut the government's expert  
24 testimony that the government has failed to establish, even in  
25 a light most favorable to the government, evidence



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1 sufficient --

2 THE COURT: Come on. I can't believe you are actually  
3 making that argument. We have one expert that says one thing  
4 and one expert that says something else. That's classic for  
5 the jury. The jury could disbelieve everything she said, in  
6 which case the government's expert stands unrebutted. That's  
7 why we have juries. That's not a legitimate argument.

8 MR. MAZUREK: Judge, there is very little evidence, as  
9 indicated, in any of the individual patients that are charged  
10 in Counts Two and Three. Except for Abraham Correa in Count  
11 Two, none of those other patients have been specified  
12 throughout this trial except in passing remarks about  
13 individual pages within their files.

14 THE COURT: It's the government's job on summation to  
15 make it clear to the jury what patients are involved in Count  
16 Three. I'll be listening closely. The motion is denied.

17 You guys need to give me five minutes because I'm  
18 playing around with something.

19 (Recess)

20 THE COURT: What you have is pages 25 and 26. This is  
21 like now 25, 26, and 27. This is an insert. We will talk  
22 about it. I am not going to print out the whole charge.

23 Can we focus on this page for a moment and then we  
24 will go back and do what I usually do, which is ask the  
25 government -- I took to heart -- I want Mr. Mazurek to know

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1 that I don't actually ignore what he says. I took to heart  
2 what you said in so impassioned a way last night and I came in  
3 this morning undertaking to beef up a little, this is not a  
4 malpractice case. So I think I've beefed that part up a  
5 little. I've also inserted several of the good faiths that you  
6 asked for in the letter that was on my chair this morning. I  
7 didn't do it the eight times that you wanted me to, but I  
8 certainly have inserted it several more times. My goal is to  
9 say things once, if at all humanly possible. Why don't you  
10 read these pages.

11 This is never going to solve everybody's problems, but  
12 does this work better? Does anybody have any particular beefs  
13 with it?

14 MR. DISKANT: From the government, one very small  
15 point, your Honor. In the first paragraph on the new 26 in the  
16 sentence beginning, that is, the government must prove beyond a  
17 reasonable doubt the doctor knew, the government would propose  
18 eliminating the word conscious before purpose and objective  
19 since in the next paragraph you explain we can either prove it  
20 through actual or through conscious avoidance. Otherwise, the  
21 government has no objection to this.

22 THE COURT: You are right.

23 MR. MAZUREK: Judge, I would object only because I  
24 think conscious is appropriate in this instance because you are  
25 talking about the, he knowingly and intentionally acted outside

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1 the course of legitimate medical practice. You can't  
2 deliberately ignore whether you're acting within or without  
3 medical practice.

4 THE COURT: It's not true. It's not true.

5 MR. MAZUREK: In order for the government to prove  
6 that he didn't act in good faith, it's his subjective belief.

7 THE COURT: It's not his subjective belief. It is an  
8 objective standard. I didn't get into that all this. But the  
9 Second Circuit has made it very clear, it is an objective  
10 standard. His belief, he may have held a belief, but if it was  
11 not a reasonable belief, if it was not reasonable for a doctor  
12 to believe, the Second Circuit is very clear about that.

13 MR. MAZUREK: I know those cases. I think it's a  
14 parsed a little bit more carefully than that and that is the  
15 belief that the defendant doctor has to have has to be based on  
16 reasonable medical judgment, but it's not replaced by a  
17 reasonable person standard. It's that that doctor believed he  
18 was acting within reasonable medical judgment.

19 THE COURT: The Second Circuit has already blessed the  
20 language of that reasonableness. We are not talking about  
21 that. I'm going to eliminate the adjective conscious before  
22 the words purpose and objective on page 26 because I agree with  
23 the government, and you have your objection to that. If we are  
24 going to talk about good faith --

25 MR. MAZUREK: Before we leave that page, just one

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1 small note. On the top of page 26, the last line before the  
2 first paragraph it should be I think, instead, knowingly and  
3 intentionally acted instead of acting.

4 THE COURT: You are right. Thank you.

5 MR. MAZUREK: Then also at the bottom of that page,  
6 your Honor, the last paragraph, the second line from the  
7 bottom, we ask that you strike the word best because that's  
8 confusing as --

9 THE COURT: You are right. I'll take that out. A  
10 doctor acts in good faith when he exercises his professional  
11 judgment.

12 MR. GOSNELL: Your Honor, are you ready to move on to  
13 page 27?

14 THE COURT: Yeah. I want to do this. Yes.

15 MR. GOSNELL: In the last paragraph there is one  
16 typographical issue which it should be Counts Two and Three.

17 THE COURT: You are right.

18 MR. GOSNELL: The other thing, with respect to that  
19 particular paragraph, as we set forth in our letter --

20 THE COURT: Can I have the letter back, please.

21 MR. GOSNELL: This is on page 2 of our letter. I  
22 believe as it's worded --

23 THE COURT: You are right. It should say, then as  
24 long as the government has proved all other -- I am not going  
25 to go through it 50,000 times, but you are absolutely right. I

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1 noticed that in your letter. It was bothering me yesterday.  
2 I'll confess that. I will insert something to say.

3 MR. GOSNELL: It's not just good faith. It's the  
4 other two elements as well.

5 THE COURT: Right.

6 MR. DISKANT: Your Honor, it does go on to say that  
7 this is specific to the third element.

8 THE COURT: Relax. Don't worry.

9 MR. MAZUREK: Judge, in an effort that might prove my  
10 overpersistence, I would ask that on page 25, the section that  
11 you beefed up relating to negligence and malpractice, that you  
12 add a sentence that we proposed on page 15 of our charge which  
13 reads: In making a medical judgment concerning the right  
14 treatment for an individual patient, medical professionals have  
15 discretion to choose among a wide range of available options.

16 THE COURT: I'm not saying any of that. Yes. Because  
17 that's not the issue that's being tried here. No. You have  
18 your objection.

19 I am going to type this in. Now, I want to work from  
20 the copies that you have with the old pagination. We have  
21 inserted a page. We have taken care of that. Let's go back to  
22 the beginning and now I will ask, does the government have any  
23 changes it would like me to make in the charge?

24 MR. DISKANT: Yes, your Honor. The government.

25 THE COURT: Page.

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1 MR. DISKANT: The first one comes up on page 17.  
2 These are both omissions. The second one doesn't have a page  
3 number. The government in its initial request requested that  
4 the Court --

5 THE COURT: My page 17 says you may not draw any  
6 inference, favorable or unfavorable, toward the government or  
7 the defendant.

8 MR. DISKANT: The persons not on trial charged.  
9 That's correct. We had additionally requested an uncalled  
10 witnesses charge. It hasn't come up yet.

11 THE COURT: I'm not giving you any uncalled witness  
12 charge. They can't draw any inferences, period, the end.  
13 Let's see what happens in the closings. I'm not putting it in  
14 here.

15 MR. DISKANT: Understood. The second point the  
16 government would draw may be the same issue, which is a  
17 particular investigative techniques not required charge.

18 THE COURT: You want that stuff.

19 MR. DISKANT: That's all.

20 THE COURT: That's a different charge than this. That  
21 has nothing to do with persons not on trial. You want, the  
22 government doesn't have to do any particular thing in order to  
23 prove its case charged. Fine. I'll throw that in.

24 MR. DISKANT: Thank you, your Honor.

25 THE COURT: It will be between pages 16 and 17. We

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1 have a standard one of those. We will throw that in.

2 Anything else?

3 MR. DISKANT: The only final one, your Honor, we have  
4 brought to the defendant's attention, to the extent he would  
5 like an other act evidence charge with respect to the tax  
6 returns, the government has no objection to such an  
7 instruction.

8 THE COURT: As I recall, it wasn't asked for by the  
9 defendant and we didn't put it in.

10 MR. MAZUREK: I'm sorry.

11 THE COURT: You didn't ask for an other acts charge,  
12 did you?

13 MR. MAZUREK: No, we did not.

14 THE COURT: So I didn't put it in. I'll put it in if  
15 you want it in.

16 MR. MAZUREK: Yes. Now that I've considered what the  
17 evidence does show, and I imagine they are going to make some  
18 arguments relating to his tax returns, I think it makes sense  
19 to include it.

20 THE COURT: We will put it in.

21 MR. MAZUREK: Thank you, Judge.

22 THE COURT: I think what we will do is, we will put it  
23 in just before the venue charge or just after the venue charge,  
24 in the back, at the end.

25 Does the defendant have any other particular

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1 peccadilloes or objections or changes it wants me to make in  
2 the charge?

3 MR. MAZUREK: Yes, your Honor. We have an exception  
4 to the good-faith language in the charge.

5 THE COURT: At my page 26, 27.

6 MR. MAZUREK: Right. And I guess wherever else it  
7 would subsequently appear in the conspiracy charge. We would  
8 ask that the Court give the instruction that we proposed in  
9 request No. 11 on page 17 of our charge.

10 THE COURT: You have your objection. I am going to  
11 say what I am going to say. It came out of a Second Circuit  
12 case. I think that what I say is clearer, more concise.

13 What else?

14 MR. MAZUREK: Just a moment. We have our continuing  
15 objection with respect to the conscious avoidance charge.

16 THE COURT: Correct. Absolutely. Make sure the  
17 record is very clear.

18 MR. MAZUREK: And also now that it's been added to  
19 Counts Two and Three in the Court's proposed charge, we believe  
20 that it's even less of a factual predicate with respect to the  
21 subsequent charges where the government has not introduced  
22 evidence relating to the particular patients that are specified  
23 in those counts.

24 THE COURT: Certainly if they have introduced no  
25 evidence, and that will become clear during the summations, if



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1 they really have introduced no evidence, then they are going to  
2 have a big problem. But I believe that there is evidence in  
3 the record.

4 MR. MAZUREK: Just to be clear, with respect to  
5 conscious avoidance, they have to show that there is a factual  
6 predicate to suggest that the doctor did something or had a  
7 high probability of knowledge with respect to those patients  
8 and did something to not ask the final question to deliberately  
9 ignore that evidence that was presented before him, and we  
10 think there is an absence of that.

11 THE COURT: I'll grant you this. It's a lot easier to  
12 deal with Count Two than it is to deal with Count Three. I  
13 will be listening with great interest to hear about the  
14 discussion of Count Three, great interest.

15 Let's clean this up so you've got clean copies.

16 Anything else?

17 MR. GOSNELL: Not about the charge.

18 THE COURT: I want to clean this up so we all have  
19 clean copies.

20 MR. MAZUREK: Judge, for scheduling purposes, will the  
21 government be giving its opening closing argument --

22 THE COURT: Then we will be breaking for lunch and we  
23 will come back and the government will do its rebuttal  
24 summation. How long do you think -- how would you know.

25 MR. DISKANT: Ms. Cucinella's opening closing should

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1 be about an hour. I anticipate my rebuttal will be  
2 approximately 30 minutes.

3 THE COURT: You don't know what your rebuttal is going  
4 to be because you don't know what he is going to say.

5 An hour, hour and a half?

6 MR. MAZUREK: I think that's probably right, hour and  
7 a half.

8 THE COURT: Don't make it two. Give me five minutes.

9 MR. MAZUREK: Am I allowed to use a Power Point for  
10 closing argument?

11 THE COURT: Yes. Absolutely. The evidence is in.

12 (Recess)

13 MR. DISKANT: Your Honor, one housekeeping matter.  
14 Government Exhibit 1204 was offered through government witness  
15 Joel Galanter. For whatever reason it is not reflected in the  
16 transcript. We have consulted with defense counsel and the  
17 parties agree it's in evidence, and I wanted to put that on the  
18 record before closings.

19 THE COURT: Do you have a problem with that?

20 MR. GOSNELL: No.

21 We did have two other issues that we wanted to deal  
22 with before the government begins its summations.

23 THE COURT: Yes.

24 MR. GOSNELL: One of the things that came up yesterday  
25 during Mr. Diskant's cross-examination of Chris Dillon was a

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1 suggestion that there were armed guards at the medical clinic.  
2 There is in fact no evidence of that. The only two times that  
3 that ever came up was during the direct examination, I believe,  
4 of Ben Lopez. The Court struck that from the record because it  
5 was based on hearsay testimony and then there was the  
6 questioning from Mr. Diskant yesterday which, again, the Court  
7 sustained objections as to that. I just wanted to be clear  
8 that there shouldn't be any suggestion that there were armed  
9 guards at the clinic because there is no evidence of that in  
10 the record.

11 MS. CUCINELLA: There won't be.

12 THE COURT: Thank you.

13 MR. GOSNELL: The other thing is, with respect to  
14 Government Exhibits 559, 559A, and 560, these were the  
15 documents that kind of came up at the end of the day on  
16 Thursday where we objected. This was also the subject of our  
17 mistrial motion.

18 In the government's response to that mistrial motion  
19 they said that they had offered photographs of the home, at  
20 least one of which clearly depicts the location and storage of  
21 these documents. And they referenced back to Government  
22 Exhibit 5A, which is a photograph of documents on a windowsill  
23 in the home office area. The suggestion that that is the  
24 location where those documents were found is actually not  
25 supported by the trial evidence.

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1           The trial evidence, analyst Castro testified that he  
2           recovered patient files in the bedroom which were depicted in  
3           Government Exhibit 5A. But when he was specifically asked  
4           about the location of those documents, he testified that they  
5           were found at the defendant's residence, not specifically in  
6           that room.

7           THE COURT: I'm sorry. Make whatever argument about  
8           the weight you want to make to the jury.

9           MR. GOSNELL: Your Honor, I think the argument the  
10          government is going to make is that that photograph shows where  
11          those particular documents were found.

12          THE COURT: Let them make the suggestion and then you  
13          undercut it with whatever evidence you think undercuts it.  
14          That's what closing arguments are for.

15          Is everyone ready?

16          MS. CUCINELLA: Yes, your Honor.

17          (Jury present)

18          THE COURT: Ladies and gentlemen, folks, we have heard  
19          the evidence. We are now going to hear the arguments that the  
20          lawyers are going to make to you. They are going to take the  
21          evidence and each of the lawyers is going to paint a picture  
22          with that evidence and it's going to come as no surprise to you  
23          that the lawyers for the two sides will paint very different  
24          pictures with the evidence.

25          What the lawyers are going to do is, they are going to

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1 call your attention to certain evidence and they are going to  
2 ask you to adopt their view of the evidence and of the  
3 inferences, the conclusions that you should draw from the  
4 evidence. If what a lawyer suggests to you seems to you  
5 logical and rational and if it's supported by evidence that you  
6 find to be credible, then you are free to adopt the inference  
7 that the lawyer asks you to draw. If what the lawyer says to  
8 you doesn't strike you as particularly logical or reasonable or  
9 if the evidence that the lawyer says supports inferences that  
10 you don't find to be particularly believable or persuasive,  
11 then you are free to reject the lawyer's suggestion of what  
12 inference to draw and to draw your own conclusions based on  
13 your belief about the credibility and the weight of the  
14 evidence that you have not heard.

15 Remember that what the lawyers say to you is not  
16 evidence. The lawyers are bound in their summations by what is  
17 in evidence. And if you were to perceive that a lawyer went  
18 beyond the evidence and added something that was not in  
19 evidence, it would be your duty to ignore it.

20 Now, that said, from time to time a lawyer will jump  
21 up during his or her opponent's summation and say objection,  
22 that's not in evidence. I can't tell you what's in evidence.  
23 How am I supposed to rule on that objection. I can't tell you  
24 what's in evidence and what's not in evidence. It's your  
25 recollection of the evidence that controls. But just remember

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1 that the lawyers are bound by the evidence and can't go beyond  
2 it.

3 During the course of the summations the lawyers will  
4 say things like, I think and I believe and they don't really  
5 mean that. They are not witnesses. They mean, I'm submitting  
6 the following for you to consider. And you should take it as  
7 such.

8 The fact is, we say I think at the beginning of  
9 sentences very frequently. It's a very common way that we have  
10 evolved in our speech patterns. I am not going to stop the  
11 lawyers every time and say, would you please change that to I  
12 submit the following for your consideration. Just know in your  
13 head that that's what the lawyer is really saying to you.

14 Remember, ladies and gentlemen, that as you form your  
15 view of the evidence and your recollection of the evidence,  
16 which is what controls everything, if there is a disagreement  
17 or a dispute among you about what the evidence actually  
18 contains, you are going to resolve that dispute not by going to  
19 your notebooks and saying, juror number 3 says it's this,  
20 therefore it must be that; you are going to ask for a read-back  
21 of the testimony or you are going to consult the documents that  
22 are in evidence, which will be back in the jury room with you.

23 Now, I intimated that the lawyers sometimes jump up  
24 and object during summations. They are allowed to do that. In  
25 fact, they would be derelict in their duty if they didn't

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1 object if the other lawyer was doing something that broke the  
2 rules for summations. It's their job to call that to my  
3 attention. Don't take offense if a lawyer jumps up and  
4 objects. I don't think you'll hear it very often if you hear  
5 it at all. I'll make a ruling on the objection.

6 And let me take this opportunity to explain to you  
7 that when I make a ruling I'm not suggesting that this side  
8 ought to win the case and the other side ought to lose the  
9 case. I'm not suggesting that this side is right and that side  
10 is wrong. All I'm doing is acting as the referee. All I'm  
11 doing is saying, that broke the rules or that didn't break the  
12 rules, all technical and lawyerly, and you don't need to know  
13 what the rules are and you don't need to know in order to  
14 decide the case. Just remember that's all I'm doing and don't  
15 draw any conclusions from my rulings about how you should rule  
16 in this case because I'm not sending you secret signals.

17 Here are the rulings for summations. We know that the  
18 government has the burden of proof. We have heard all the  
19 evidence, but even at this moment the defendant is presumed  
20 innocent. That's your mindset. So the government has the  
21 burden of overcoming that presumption beyond a reasonable  
22 doubt.

23 The government will, therefore, put its case to you  
24 first. It will have the opening summation. Then the defense  
25 will have an opportunity to sum up and to argue its case.

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Summation - Ms. Cucinella

1 Remember, the defense does not assume the burden of proof by  
2 arguing its case. The burden of proof always rests with the  
3 government. And because the government has the entire burden  
4 of proof we let the government have the last word. So there  
5 will be a final or rebuttal summation of shorter duration that  
6 you will hear from the government this afternoon. We will have  
7 the government's summation this morning, then we will have a  
8 lunch break, and then we will have the defense summation and  
9 the rebuttals this afternoon.

10 Ms. Cucinella, is the government ready to close?

11 MS. CUCINELLA: The government is ready, your Honor.

12 THE COURT: You may have the floor.

13 MS. CUCINELLA: Moishe Mirilishvili is a drug dealer.  
14 He's not the type that stands on a street corner or uses  
15 couriers to sneak drugs in over the border. He's not the type  
16 you see in movies or on Netflix. He is worse. He is a drug  
17 dealer who hides behind a white coat and his medical degree and  
18 uses the guise of practicing medicine to write medically  
19 unnecessary prescriptions, prescriptions that cause and enable  
20 addiction, to people he knew didn't need them and to people he  
21 knew weren't taking them. He ran his clinic not like a doctor  
22 but like a drug trafficker, and by doing so he profited  
23 millions of dollars off the backs of the addicts he created and  
24 the criminals he associated himself with.

25 (Continued on next page)



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Summation - Ms. Cucinella

1 I'm not going to refer to the defendant as a doctor in  
2 this closing, because you and I both know that with respect to  
3 the majority of the patients that he gave prescriptions to, he  
4 wasn't acting as one.

5 Let me make clear there may have been some patients in  
6 pain, some patients who needed oxycodone. That is not the  
7 question for you. The question for you is whether, based on  
8 all of the evidence you have seen, that the defendant also  
9 issued medically unnecessary prescriptions for no legitimate  
10 reason outside of the usual course of practice.

11 You have sat very patiently through all of the  
12 evidence that has come in in the past two weeks. You have been  
13 diligent in the attention that you have paid to the witnesses  
14 on the stand. You know what happened here. You know who had  
15 almost \$2 million stashed in his home, and you know who drove  
16 that white Mercedes to and from Washington Heights every day.  
17 You know who walked past the crowds of patients waiting outside  
18 every morning and who walked out at the end of every day  
19 carrying that bag of cash. You know despite all of the systems  
20 he put in place, despite all of the things he did to hide his  
21 involvement, you know who was the architect of this scheme.  
22 You know who operated it, and you know who profited the most  
23 from it, and that's why we're here today. We're here to  
24 finally hold the defendant, that man, accountable.

25 Because of what the defendant did, he is charged in a

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Summation - Ms. Cucinella

1 three count indictment. All three counts at their core allege  
2 that when the defendant wrote prescriptions for oxycodone he  
3 acted outside the usual course of medical practice and without  
4 a legitimate medical purpose, that there was no good faith. I  
5 will come back to the specifics of the three counts at the end,  
6 and we will talk about what I expect Judge McMahon will  
7 instruct you.

8 Now, I'm not going to repeat or summarize everything  
9 that you heard over the last two weeks. I know you have been  
10 listening. I'm going to use this time instead to talk to you  
11 about how you can be sure beyond any reasonable doubt that the  
12 defendant not only knew what was going on in his clinic, but  
13 that it was by design. Because when it comes down to it,  
14 that's all that is actually in dispute here.

15 First, let's talk about what is not in dispute. There  
16 is no real dispute that crowds of patients would line up out in  
17 front of the clinic in the morning. There is no dispute that  
18 no nurses worked at this clinic, nor is there a dispute that  
19 after the one individual who purportedly had medical training  
20 was fired, that there was no effort to hire an actual medical  
21 staff.

22 There is no real dispute that the defendant accepted  
23 documents that were fake, like the ones from Doshi Diagnostic  
24 that Dr. Lawler -- remember him -- walked you through on the  
25 stand, and the urinalyses reports that had names handwritten or

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Summation - Ms. Cucinella

1 literally cut and pasted on.

2           There is no dispute that the defendant wrote the exact  
3 same oxycodone prescription for 95 percent of the people who  
4 came through his door. Indeed, there is no real dispute that  
5 there were patients being brought into the defendant's clinic  
6 for the purpose of getting prescriptions that would be sold on  
7 the street.

8           And there is no dispute that the vast majority of the  
9 patients paid cash, \$200, that they handed directly to the  
10 defendant in the treatment room before he would begin treating  
11 them.

12           In fact, the only issue in dispute is whether the  
13 defendant knew as he was collecting those cash payments and  
14 writing identical oxycodone prescription after oxycodone  
15 prescription for those patients who didn't need it, whether he  
16 knew that he was writing medically unnecessary prescriptions  
17 outside of the usual course of practice and not in good faith.

18           I submit to you that when you use your common sense,  
19 and when you look at the evidence, there is no doubt -- no  
20 doubt -- that this man knew exactly where and more specifically  
21 who his cash was coming from, and that he was doing everything  
22 in his power to make sure that that cash kept coming.

23           First let's look at how he ran the 162nd Street  
24 clinic. As you know, the clinic in Washington Heights wasn't  
25 where the defendant was practicing at the beginning of the

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Summation - Ms. Cucinella

1 charged conspiracy. He had been at a couple of other locations  
2 located around the Bronx, places where he began to develop some  
3 of the relationships with patients, and the places where we  
4 would argue he started to earn his reputation as a doctor who  
5 would freely give out oxycodone.

6 You heard from Ms. Rosen that based on the activity  
7 feed from Practice Fusion, the doctor started approximately 700  
8 patient files during that nine-month timeframe. But from  
9 October 2012 to December 2014 he had almost four times as many  
10 patients. Why? He opened his own clinic in the fall of 2012.  
11 No more oversight, no more accountability. He moved to Jumel  
12 Terrace, the neighborhood that Mr. Lopez told you about in  
13 Washington Heights.

14 Mr. Lopez told you that the moment the doctor arrived  
15 and opened his doors in Mr. Lopez's neighborhood, things  
16 started to change. Both expensive and inexpensive cars with  
17 out-of-state license plates, dropping off groups of patients  
18 and driving away, the same cars time and again, people lining  
19 up to wait in the mornings before the clinic even opened,  
20 people hanging around, coming into his neighbors' property and  
21 urinating on their porches, armed robberies, things that  
22 Mr. Lopez had never seen in his neighborhood before, and  
23 notably after the defendant's shop was shut down, things he has  
24 never seen since, even though there is now a doctor's office  
25 open in that same location.

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Summation - Ms. Cucinella

1           It was obvious to everyone, everyone in that  
2 neighborhood, that this wasn't a doctor's office; it was a drug  
3 den. It was obvious from the outside, and it was even more  
4 clear once you got past the tinted windows, past that security  
5 guard, and you took a look at what was going on inside.

6           Here was a purported doctor's office where at one  
7 point in time there was one person working there who  
8 purportedly had any medical training at all. Ladies and  
9 gentlemen, ask yourselves is that a coincidence? The fact that  
10 the defendant hired Abraham Correa and Damon Leonard to help  
11 him run his clinic tells you almost everything that you need to  
12 know.

13           Let's start with Correa. Before he was a bouncer at  
14 the doctor's office, he was a patient of the defendant's. He  
15 got four prescriptions of, you know, 90 tabs of 30 milligrams  
16 of oxycodone. That was before the defendant cut him off to  
17 work for him as security, a man for whom he had written a  
18 prescription for a cervical collar, a man who defense counsel  
19 has suggested fooled the defendant with his convincing story  
20 about falling from scaffolding. Within three months on  
21 oxycodone he was healthy enough to play the role of security  
22 guard.

23           Now, remember that the defendant writes Correa one  
24 last prescription after he hires him. It was on January 10th  
25 of 2013, a date that we're going to come back to. After

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Summation - Ms. Cucinella

1 January 10 Correa -- with pain supposedly so severe as to  
2 warrant that high of a dose of oxycodone -- is simply cut off.  
3 Even Dr. Warfield would say that someone whom a doctor actually  
4 believed had been taking the drug for four months would suffer  
5 from withdrawal, would need to go to some sort of detox.

6 But the defendant didn't take any steps to wean Mr.  
7 Correa off the oxy. He wasn't tapered; his doses weren't  
8 titrated down. Why? Because the defendant knew all along that  
9 Correa wasn't taking the medicine, that he didn't need it. The  
10 defendant wasn't acting as a doctor. There was no good faith  
11 here. Mr. Correa said it best himself: He was a drug dealer,  
12 and Dr. Moshe was his supplier.

13 Correa took that stand, and he was honest with you  
14 about who he is and what he was doing. He did not hide his  
15 history with drug dealing; he owned it. He also introduced you  
16 to some of the other bosses or the crew chiefs as they were  
17 sometimes called during this trial, the other people who would  
18 gather at the clinic daily and who were all bringing in groups  
19 of people to see the defendant so that they could collect the  
20 oxycodone prescriptions which the defendant was guaranteed to  
21 write and to sell the pills.

22 For example, he told you about Joseph Gray, whom he  
23 knew as Dogs, and about Thomas White. He told you they were  
24 each there basically every day getting their patients in to see  
25 the defendant.

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Summation - Ms. Cucinella

1 He also told you about Raymond Williams who was known  
2 as Obama. He told you that Ray Williams was doing the same  
3 thing, bringing in groups of patient daily.

4 And more important Correa told you about Obama's  
5 relationship with the defendant, about how Obama introduced  
6 Correa to the game even before the defendant moved to the new  
7 location on 162nd Street, and about how Obama kept coming back,  
8 even after Correa was hired, to speak privately with the  
9 defendant.

10 Correa told you what those meetings were about, about  
11 how Obama was having difficulty getting the prescriptions the  
12 defendant wrote filled, about the success of the conspiracy  
13 that these men were in.

14 And you know that the defendant counted on Correa to  
15 bring in his patients. You know that because the defendant  
16 said it. He told Correa after he fired him that he could still  
17 bring his patients there, patients guaranteed to get an  
18 oxycodone prescription from the defendant, because, as Mr.  
19 Correa told you, the defendant wasn't a doctor; he was a  
20 supplier.

21 And the testimony that you heard from Damon Leonard  
22 corroborates that. Damon Leonard, he started out as a crew  
23 chief working for a family friend, bringing patients into the  
24 clinic, people he described as having bloodshot eyes, red eyes,  
25 reeking of booze. He told you they were addicts and

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Summation - Ms. Cucinella

1 alcoholics, homeless people, people that John Coleman had  
2 rounded up off the street to pose as patients, to trick the  
3 doctor.

4           Damon was there day after day repeatedly before he got  
5 his first oxycodone prescription from the defendant, and the  
6 defendant had no issue with it, none. Why? Because the  
7 defendant wasn't making money off of patients with real pain;  
8 the defendant was making money off the people the crew chiefs  
9 were bringing in by the car load, cash patient after cash  
10 patient. He wasn't treating them. He was giving them exactly  
11 what they wanted, and he was getting exactly what he wanted in  
12 return: Cash. This wasn't a doctor's office. It was a pill  
13 mill.

14           Now, you know that the defendant hired Damon exactly  
15 the way he hired Mr. Correa. Damon didn't come to him begging  
16 for a job. The defendant offered him one. Now, you have to  
17 ask yourself why Damon? Why? I think we can agree that the  
18 defendant wasn't exactly in the position to post an ad in the  
19 paper or to put up a help wanted notice up at Columbia Medical  
20 School, which is only a few blocks away. He wanted someone who  
21 knew the game, who understood what was happening and who wasn't  
22 going to get in his way. He wanted someone that Jomaris could  
23 train, someone that would keep the cash coming.

24           Damon Leonard testified before you over the course of  
25 three days. You watched him, listened, and you know exactly



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Summation - Ms. Cucinella

1 why the defendant hired him. He thought Damon would be loyal  
2 to him until the end. Don't worry, stick with me; you will be  
3 OK. He didn't think Damon would turn on him. The defendant  
4 was wrong.

5 Damon told you about the defendant's nightly routine.  
6 He told you that he would go into his office, and he would  
7 count up how many cash patients he had and how many insurance  
8 payments, and if there weren't enough cash payments, he would  
9 tell Damon to get on the phone, that he hadn't done his job,  
10 and he needed to get patients in there for the next day.

11 No one here believes that Damon had a stash of  
12 legitimate chronic pain patients at his fingertips. And to be  
13 clear, neither did the defendant. He knew exactly what he was  
14 doing when he told Damon to get the numbers up. He knew  
15 exactly the people he would be writing prescriptions for the  
16 very next day.

17 And Damon, knowing how angry the defendant would get,  
18 brought his family in, his brothers, his sisters, his niece.  
19 Did Damon make money on this? Absolutely. Damon pled guilty.  
20 He knows what he did, and he has taken responsibility.

21 Look at how the defendant reacted. He told Damon that  
22 he had met his niece. He wrote oxycodone prescriptions for  
23 her. Nothing to see here, no questions asked. Again, ladies  
24 and gentlemen, that's not good faith, that's not medicine; it  
25 was cash in exchange for oxy prescriptions, nothing more.

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Summation - Ms. Cucinella

1           Let's talk about the cash patients for a minute.  
2       Damon told you that insurance patients would have to wait to be  
3       seen until after the cash patients had been seen, that the  
4       defendant would get angry if there wasn't enough cash patients  
5       in a day. That information was corroborated by an unlikely  
6       source, Anna Torres, one of the defendant's witnesses and one  
7       of the defendant's few insurance patients. She told you about  
8       her long history of pain, and she told you why she ultimately  
9       stopped seeing the defendant, because she was sick of the  
10      crowds and of the office staff telling her to come back the  
11      next day because all of the cash patients got to go ahead of  
12      her. Do you really believe that that was Damon Leonard's call?  
13      You saw the cash in the defendant's home. Do you think it  
14      mattered to Damon Leonard whether or not the patient was paying  
15      with insurance or cash?

16           And you know why else it mattered. You heard Dr.  
17      Warfield. She gives presentations in which she tells doctors  
18      about insurance companies and how they're doing more vigilant  
19      reviews and that those reviews can lead to criminal  
20      investigations. That wasn't Damon's call.

21           Damon also told you about the fact that the defendant  
22      would kick out certain patients. But I want you to think hard  
23      about what Damon actually said about that. He testified that  
24      when he was a patient, the defendant, he asked him if he was a  
25      cop. He said that he watched the defendant kick out patients

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Summation - Ms. Cucinella

1 after the PMP program had started or sometimes if their  
2 paperwork wasn't quite right, all things that risked the  
3 defendant getting caught. How do you know? Because when he  
4 would kick patients out for not having the right paperwork, he  
5 would tell them they could come back, that he would see them  
6 the same day. He didn't care if they were actually hurt. He  
7 didn't care if they were legitimate patients. He wanted a  
8 piece of paper to put in the file to cover himself, for the  
9 same reason he had Jomaris and Damon start signing off on those  
10 reports.

11 Look at the reports with Damon's name on them. They  
12 are so obviously fake, no one could take them seriously. The  
13 doctor had Damon put his name on them so he could have someone  
14 he could point the finger at when this day came.

15 But, again, you know too much. You see right through  
16 that. Think about what Damon told you about February of 2014.  
17 Yes, it's a date he remembered. Why? It stood out to him,  
18 because the defendant called him into his office, and he talked  
19 to him about the fact that Dr. Terdiman had been arrested, and  
20 that they had to start kicking the addicts and the bums out of  
21 their clinic.

22 You don't need to take Damon's word for that, although  
23 I submit you can. You can also look at the BNE data. It shows  
24 in February of 2014 a dip in the number of prescriptions the  
25 doctor was writing. Why? Because he was scared, because he

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Summation - Ms. Cucinella

1 knew what he was doing was illegal because he wasn't practicing  
2 medicine.

3 And you don't have to take Damon or Correa's word on  
4 this. To be clear, again I submit that you can, but  
5 Mr. Diskant and I are not the ones who chose those two as  
6 witnesses. The defendant did. He is the one who conspired  
7 with them to keep his pill mill running, and they are the two  
8 eye witnesses to how the defendant ran his drug trafficking  
9 operation. I suggest you take their stories and you match them  
10 up with everything else you know about this conspiracy. You  
11 will find that their stories are corroborated not only by each  
12 other but by all of the other evidence in this trial.

13 Now, as you know, and as you will hear multiple times  
14 today, I must remind you that the defendant has no burden in  
15 this case and that the burden is entirely the government's.  
16 It's a burden we take very seriously and it's not something we  
17 shy away from.

18 But when the defense puts on a case -- as they have  
19 here -- when they make arguments through the cross-examination  
20 of witnesses, through their own witnesses and in jury  
21 addresses, the government has the right and in fact the  
22 obligation to comment on those arguments. And you, ladies and  
23 gentlemen, you must scrutinize those arguments just as you will  
24 every argument in this case.

25 Here you heard Mr. Mazurek's opening, and you know

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Summation - Ms. Cucinella

1 what he was trying to show through the cross-examination of  
2 witnesses. Their position is that the defendant was duped,  
3 that he relied on his office staff and his security team to vet  
4 his patients, and that he did everything in his power to  
5 prevent these modern day criminals from infiltrating his old  
6 world practice. The evidence doesn't support any of that.  
7 Look at the evidence.

8 Let's start with the fake paperwork. Damon told you  
9 that at times Jomaris would alter it, she would do overrides.  
10 At times he would alter it. Patients would come in with fake  
11 paperwork provided by crew chiefs. There is no question that  
12 the paperwork, those radiologist referral forms, they were  
13 fake. Damon didn't discuss this explicitly with the defendant,  
14 but these are the documents that the defendant saw, and the  
15 idea that he saw them and relied on them to make any kind of a  
16 legitimate diagnosis is absurd.

17 This is a man who took a pen and checked to make sure  
18 that the cash that his patients were handing over to him at the  
19 beginning of each appointment was legitimate. He then accepted  
20 documents that were fraudulent on their face and used them to  
21 justify prescription after prescription of 90 pills of 30  
22 milligrams of oxycodone. This is not medicine; this is drug  
23 dealing.

24 Now, significantly Damon also testified that there  
25 came a time when he stopped doing overrides, when Damon told

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Summation - Ms. Cucinella

1 the crew chiefs he couldn't help with the urine anymore. So,  
2 what happened? What happened when the defendant couldn't count  
3 on Damon anymore? You know what happened. Look at  
4 Government's Exhibits 559, 559A and 560. We passed these  
5 around. The defendant went from practicing old world medicine  
6 to old world arts and crafts. This is old school tape and  
7 white-out.

8 When his hands-off techniques failed, when he could no  
9 longer leave everything to Jomaris and Damon and let his  
10 patients bring in urine from the outside -- which, by the way,  
11 have you ever heard of such a thing -- the defendant took  
12 matters into his own hands and he altered the documents  
13 himself.

14 How do you know? There wasn't one blank document  
15 found in the defendant's home; there is a group of them.  
16 Examine those documents. They're not scans homemade by Damon  
17 Leonard. The white-out is not still wet, but you can still  
18 feel it. Look at the picture taken of the defendant's home  
19 office, the window sill with stacks of medical records and the  
20 multipurpose scanner on the defendant's desk. You know what  
21 was going on here. You know what the defendant was doing.

22 Now, there has been a lot of talk in this case about  
23 urinalyses reports. You heard Dr. Warfield say that despite  
24 her years at Harvard, she found them endlessly confusing. You  
25 heard both Dr. Gharibo -- excuse me -- you heard Dr. Gharibo

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Summation - Ms. Cucinella

1 say that a doctor who is looking to prevent diversion would  
2 test for more than just opiates. I submit that everything that  
3 you need to know about urinalyses reports comes from Aegis and  
4 AFTS.

5 Joel Galanter testified that Aegis communicated to the  
6 doctor that there were a number of samples that appeared to be  
7 coming from the same source, meaning that the urine samples  
8 were no good. Aegis gave him a list of patients for this.  
9 It's Government Exhibit 1204.

10 To be clear, the doctor went through the motions of  
11 kicking those patients out. Did he follow through? Of course  
12 not. You saw Government Exhibit 109 when analyst Castro was on  
13 the stand. Almost every single one of those patients got  
14 oxycodone prescriptions again. What happened? Aegis had  
15 enough; they discontinued the service; they told the doctor  
16 they wouldn't work with him anymore.

17 And Chris Dillon, a witness for the defense,  
18 corroborated all of this. He told you that even after the  
19 defendant was kicked out by Aegis, even after the defendant was  
20 confronted with evidence that some of his patients were taking  
21 other illicit drugs and needed to test for those, the defendant  
22 went right back to testing his patients for oxycodone only.

23 Remember Mr. Dillon's testimony on that front?  
24 Notwithstanding the hundreds of pain management doctors he  
25 caters to, he couldn't remember a single other instance of a

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Summation - Ms. Cucinella

1 doctor only testing for oxy. He also told you that two thirds  
2 of the defendant's patients paid cash. That's not a doctor  
3 trying to prevent diversion or to make sure his patients were  
4 taking oxy. It's not medicine. That's the defendant trying to  
5 paper the file. That's not good faith.

6 Let's also look at Jose Lantigua. You have heard some  
7 of the recordings of his visits with the defendant. You heard  
8 Dr. Warfield testify that these visits were well within the  
9 practice of medicine, which is a different standard. That's a  
10 hard opinion to square with the facts.

11 You know, for example, that Jose Lantigua went in and  
12 asked for M30s, slang for oxycodone. The defendant, he didn't  
13 blink. More important, you know things that Dr. Warfield  
14 doesn't, because you heard all of the other testimony in this  
15 case. You know also what that exam actually looked like. You  
16 saw Damon Leonard step off of that witness stand and  
17 demonstrate how he faked his pain for the defendant. You saw  
18 him limp. You know that Jose Lantigua, that his exam went  
19 similarly. This wasn't the kind of targeted or thorough exam  
20 that a patient who is about to be prescribed highly addictive  
21 narcotics deserves. The defendant was focused on checking the  
22 boxes, getting just enough to fill out a Post-it note, write a  
23 diagnostic code on his prescription pad and get the patient out  
24 the door. He didn't care about treating patients; he cared  
25 about the cash.



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Summation - Ms. Cucinella

1           How else do you know that? He never translated those  
2 notes to Practice Fusion. He didn't even bother. This wasn't  
3 an insurance patient; no one was likely to look.

4           How else do you know that? Because the defendant gave  
5 Mr. Lantigua the same exact dosage and the same exact medicines  
6 that he gave almost everyone else who came to see him. Dr.  
7 Warfield even had to admit that there is tremendous variation  
8 in the amount of medicine that a patient would need to relieve  
9 their pain.

10           Let's talk a little bit just briefly about the  
11 experts. You heard from Dr. Gharibo who helps design the pain  
12 management center at Langone Medical Center here in New York.  
13 He told you a little bit about how legitimate pain management  
14 medicine works, about the variety of treatments that a real  
15 pain management physician would use in the normal course of  
16 practice. Because, as he told you, every person's pain is  
17 different and treating that pain requires an individual  
18 approach.

19           Now, you also heard from Dr. Warfield, and I would  
20 submit to you that on those core points, on the fundamentals of  
21 what pain management should be, her testimony was entirely  
22 consistent with Dr. Gharibo's. She also conceded that pain  
23 typically requires an individual approach. She reached a  
24 different conclusion, and I would submit to you, as you saw for  
25 yourself on cross-examination, that those conclusions don't

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Summation - Ms. Cucinella

1 follow from her discussion of what pain management should be.

2 And more important, as she told you herself, she  
3 doesn't know the facts of this case, she doesn't know what you  
4 know. She didn't know who Damon Leonard is. Evidently they  
5 hire a different kind of staff at the pain management clinics  
6 at Harvard. Your common sense tells you that her conclusion  
7 should be rejected. The defendant wasn't practicing medicine;  
8 he wasn't issuing prescriptions in the usual course of  
9 practice; and he wasn't acting in good faith either.

10 As I expect Judge McMahon will instruct you at the end  
11 of this trial, a doctor acts in good faith when he exercises  
12 his best professional judgment about a patient's medical needs  
13 in accordance with the --

14 MR. MAZUREK: Objection.

15 THE COURT: Here is the problem. I forgot to tell  
16 you, I'm in charge of the charge, and she was out of the room  
17 preparing when we had the charge conference. OK? When he  
18 exercises his professional judgment. OK? That's what you're  
19 going to hear.

20 MS. CUCINELLA: Thank you, Judge.

21 THE COURT: But you can't blame her because my draft  
22 had the other word in it. Forget it. Thank you.

23 MS. CUCINELLA: It means that the doctor acts in  
24 accord with what he reasonably believed should be proper  
25 medical practice.

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Summation - Ms. Cucinella

1           A doctor who is actually practicing medicine in good  
2 faith would not be prescribing the same dosages of oxycodone to  
3 every patient he sees; he wouldn't write the same scripts for  
4 76 year old Altagracia Medina as he would for Abraham Correa.  
5 He wouldn't be writing same scripts for a patient who had never  
6 taken oxycodone as a patient who was oxy dependent. And, most  
7 important, he wouldn't be prescribing oxycodone for patients  
8 who give him documents where the name is literally cut and  
9 pasted onto the page. That is not medicine; it's certainly not  
10 good faith. That is prescribing oxycodone for the purpose of  
11 causing addiction or for patients who you know are selling the  
12 pills. It's drug dealing.

13           How else do you know that? Look at the defendant's  
14 relationships with the crew chiefs who came into the clinic.  
15 Let's start with Tasheen Davis. Damon told you that she was  
16 both a patient and a crew chief. We know from Tasheen Davis'  
17 Practice Fusion file and from her BNE that the doctor  
18 prescribed her seven oxycodone prescriptions, all for 90 pills,  
19 all 30 milligrams, from February 2 through October 8 of 2013.  
20 You also know that on October 10 of 2013 she was stopped trying  
21 to fill an oxycodone prescription in Greenwich, New Jersey,  
22 which is about two to two and a half hours outside the city,  
23 according to Detective Beers. You heard from Detective Beers  
24 that they sent a grand jury subpoena to the doctor on October  
25 15.

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Summation - Ms. Cucinella

1           You also heard from analyst Castro that the  
2 defendant's home got a call from Ms. Davis' cell phone at 7:15  
3 p.m. on October 18. Immediately after that call what does the  
4 defendant do? Does he print out the records he has,  
5 comfortable that a Post-it note for each follow up visit and  
6 diagnostic codes on a prescription pad will do the trick? No.  
7 Why? You know why. Because he knows that that's not good  
8 enough. He knows that if you're prescribing oxy, you're  
9 expected to keep records.

10           You know what happened on that phone call. One of his  
11 crew chiefs called him, told him that she was arrested and that  
12 they were looking for her records. He needed to cover his  
13 tracks. What he didn't realize, however, was that the activity  
14 feed in Practice Fusion couldn't be edited, and that there was  
15 an audit trail showing that when he sat down that night moments  
16 after he got that call from Ms. Davis to fill out his notes for  
17 all of her visits in one sitting, that you would be able to see  
18 that here in this courtroom two years later. Those records he  
19 wrote that night, that's what went to the Warren County  
20 prosecutor's office. That's not documenting the care and  
21 treatment of a patient. That's altering records so that you  
22 look legitimate when the subpoena arrives. It's not medicine;  
23 it's not good faith.

24           It's also worth noting that the defendant never wrote  
25 Ms. Davis another prescription for oxycodone after that. If he

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Summation - Ms. Cucinella

1 had believed in good faith that she was a patient who needed  
2 it, you would think that the pattern would have continued or  
3 that she would have at least been sent to detox. But none of  
4 that happened. He just stopped seeing her because she became a  
5 liability. She wasn't worth risking his whole operation over,  
6 so she too was cut off. It's not medicine; that's a conspiracy  
7 to distribute oxycodone.

8           You also need to look at the defendant's relationship  
9 with Ray Williams, Obama. You heard testimony from both Damon  
10 Leonard and Abraham Correa that the defendant would have  
11 closed-door meetings with Williams. Look at the phone records  
12 too. Not only did Obama call the defendant, but the defendant  
13 also called Obama. Why? Because the defendant counted on  
14 Obama to bring him his patients, and Obama counted on the  
15 defendant to write the oxycodone prescriptions. This was their  
16 agreement. They talked about it openly, more so than the  
17 defendant did with anyone else, more so than with Correa or  
18 even Damon Leonard.

19           Ray Williams was the person that the defendant  
20 believed knew too much, and he said so to Damon on the day of  
21 his arrest. Damon told you I saw the doctor, I greeted him, I  
22 asked him how he was feeling; he told me OK. And the next  
23 thing he said to me was, I asked him, I said what's the matter?  
24 Your face looks kind of -- he said this fucking guy was  
25 talking. I said, well, who are you talking about in

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Summation - Ms. Cucinella

1 particular? And he said Obama, Ray Williams.

2 Who did the defendant blame on the date of his arrest?  
3 It wasn't Jomaris, it wasn't Damon, it wasn't Augustine Cruz or  
4 anyone else who worked in that office. Those were the people  
5 that the doctor knew he could point the finger at. He knew he  
6 had cover with them. He was scared of Ray Williams, because  
7 Ray Williams was not only a patient -- he received 12 oxycodone  
8 prescriptions himself -- but because Ray Williams could connect  
9 the defendant directly to the crew chiefs.

10 Before I sit down I want to briefly address the three  
11 counts in the indictment. Count One of the indictment alleges  
12 that the defendant did this as part of a conspiracy.

13 Now, as you know, Judge McMahon is going to instruct  
14 you on the law at the end of this trial, and what she says  
15 goes. I expect that she will tell you that a conspiracy is  
16 nothing more than an agreement with one other person. I submit  
17 that in this case you can find that agreement with Abraham  
18 Correa, the security guard who was told he could no longer work  
19 there but still welcome to bring his patients.

20 I submit that you can find that agreement with Damon  
21 Leonard -- who the defendant trusted to keep things running and  
22 make sure that the files were properly papered -- you can find  
23 that agreement with Raymond Williams, or Tasheen Davis, or  
24 Thomas White, or Joseph Gray, or any of the other bosses or  
25 crew chiefs whose patients went in to see the defendant, or you

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Summation - Ms. Cucinella

1 can find that agreement with any one of the patients who came  
2 in time and again and got medically unnecessary prescriptions.

3 Counts Two and Three are each what are referred to as  
4 substantive counts. They each allege that on two separate days  
5 within the time period of the conspiracy the defendant wrote at  
6 least one medically unnecessary script outside of the usual  
7 course of practice.

8 Government Exhibit 110 shows you who the patients were  
9 on January 10, 2013. The defendant wrote 18 prescriptions for  
10 oxycodone that day, including one for Abraham Correa. This was  
11 after Mr. Correa had already started working for him. There is  
12 no question that Mr. Correa did not need oxycodone at this  
13 point and that the defendant knew it.

14 With respect to Count Three you know from Damon  
15 Leonard what was going on in the clinic during the fall of  
16 2014. On October 28, 2014 the defendant wrote 33  
17 prescriptions, all of them for 90 pills of 30 milligrams of  
18 oxycodone, and all of them in exchange for cash, every single  
19 one.

20 And while we haven't discussed all of them, you will  
21 remember Larry Ashby, or you may recall him as Miss Prunty, for  
22 whom the defendant accepted a document that was again  
23 fraudulent on its face. He purported to make a diagnosis for  
24 this patient based on this document, and then he proceeded to  
25 write seven oxycodone prescriptions for him, including one on

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Summation - Ms. Cucinella

1 October 28th of 2014. You will recall that there are no notes  
2 in Practice Fusion for this patient, despite seven visits to  
3 the doctor.

4 You can also look through the Aegis documents found in  
5 the defendant's home at Government Exhibit 360. You can see  
6 the fake urinalysis created for a patient named Marco Varella.  
7 He too got an oxycodone prescription on October 28, 2014.

8 You can look at Government's Exhibits 202 and 402 for  
9 a patient named Brian Alex Champion. He too got a medically  
10 unnecessary prescription on October 28, 2014.

11 Ladies and gentlemen, based on all of this evidence,  
12 it is unmistakable, beyond a reasonable doubt, that the  
13 defendant knew exactly what was going on in his clinic and, as  
14 I stated earlier, that he was counting on it.

15 But there is also another way for the government to  
16 prove the defendant's knowledge. I expect that Judge McMahon  
17 will instruct you on conscious avoidance, and she will tell you  
18 that if the defendant deliberately closes his eyes to what  
19 would otherwise have been obvious to him, if he acted with a  
20 conscious purpose to avoid learning the truth, then he acted  
21 knowingly; like, for example, consciously avoiding the fact  
22 that he was writing medically unnecessary prescriptions for  
23 homeless people and addicts that the crew chiefs were bringing  
24 in off the street, and not for legitimate pain patients in the  
25 usual course of practice.



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Summation - Ms. Cucinella

1           So, even if you believe his story that Damon Leonard  
2 and modern day criminals infiltrated his clinic, and that he  
3 played no role in doctoring those documents, the government  
4 submits to you that he is still guilty under a theory of  
5 conscious avoidance, because he should have known what was  
6 going on right under his nose.

7           To be clear, ladies and gentlemen, the evidence  
8 supports either theory. Whether you find the defendant was  
9 willfully blind or that he was the architect of this  
10 conspiracy, he is guilty just the same.

11           I refer you, however, to the statement the defendant  
12 made to law enforcement who responded the second time the  
13 doctor's office was robbed. He told agents that it was his job  
14 to watch and analyze everything in the clinic, and that there  
15 was nothing that went on there without his knowledge. And of  
16 course there wasn't. He had too much riding on it. He had  
17 about \$1.7 million in drug money to be exact, the cash he took  
18 home and bundled with money wrappers and stashed around his  
19 house in Ziploc bags, the cash he was hiding from the IRS by  
20 underreporting his income, the same cash he lied to the police  
21 about when they came in that day for the robbery, when he told  
22 them that he took in just \$1,000 in cash a day, the equivalent  
23 of seeing three or four cash patients. The defendant was  
24 running a drug spot, and he was making money hand over fist.

25           Think about that, ladies and gentlemen, when you go

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Summation - Ms. Cucinella

1 back to the jury room. Think about who was running the show.  
2 Who had the most to lose and who had the most to gain? It was  
3 the defendant. It's time to hold him accountable.

4 THE COURT: OK, ladies and gentlemen. We are going to  
5 take our lunch break now, and we are going to be back here at I  
6 think 1:30. OK? And we will have the defense summation, and  
7 then we will have the government's rebuttal summation. It  
8 wouldn't be fair to start the defense summation now, so you may  
9 as well go to lunch now. Don't discuss the case; keep an open  
10 mind. And I will see you at 1:30.

11 (Luncheon recess)

12 (Continued on next page)

G3FMMIR4

Summation - Mr. Mazurek

## AFTERNOON SESSION

1:30 p.m.

(Jury present)

THE COURT: Mr. Mazurek, are you ready to close?

MR. MAZUREK: I am, your Honor. May it please the Court, counsel, Doctor, and ladies and gentlemen of the jury.

I stood before you almost exactly two weeks ago and told you that the government would not prove its case by evidence beyond a reasonable doubt. They would not prove its case against Dr. Mirilishvili and they certainly have to the.

Ladies and gentlemen, very simply, the government wants you to convict Dr. Mirilishvili on three basic grounds: 1, that they found \$1.7 million in cash in his apartment; 2, that he wrote over 13,000 scrips of oxycodone; and, 3, based on the cooperating witness testimony of Damon Leonard and Abraham Correa. Neither alone nor in combination do they provide proof beyond a reasonable doubt. They don't come close.

The government wants to blind you, blind you with big numbers and statistics and pie graphs and charts, 13,000 scrips, \$1.7 million, and have you ignore the gaping holes in their evidence. They want you to convict a man in this criminal court because he decided to keep his life savings in cash in his apartment and because he truly believed in good faith, as a medical doctor, that oxycodone, combined with other medications, worked to temporarily relieve pain. Please,

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Summation - Mr. Mazurek

1 members of the jury, do not let the government blind you, do  
2 not let them fool you in the same way that Damon Leonard and  
3 Abraham Correa fooled this man.

4 The government in its closing remarks to you this  
5 morning, they said things about addicts, homeless people. They  
6 referred to the patients of Tasheen Davis and Raymond Williams  
7 and asked you to speculate about things. Where was the  
8 testimony? Where was the evidence? Where were the documents?  
9 They were not in evidence.

10 Let me say something straight away. The evidence does  
11 not show and did not show throughout this trial that  
12 Dr. Mirilishvili woke up one day at age 65 and decided to  
13 become a drug dealer. That never happened. The very idea is  
14 preposterous. The evidence does not show that it happened.  
15 The evidence showed that Dr. Mirilishvili practiced a very  
16 specific and certain way. He adopted a standard group of  
17 medicines to relieve a very standard set of pain. He believed,  
18 the evidence showed, that 60 to 90 milligrams of oxycodone per  
19 day, combined with a group of other medication, had the best  
20 chance to temporarily relieve that pain.

21 Let me say something else. He was not performing  
22 brain surgery. He was prescribing pain medicine to people who  
23 presented to him that they needed it. It was for temporary  
24 relief and he always told the patients that they needed to see  
25 other specialists, orthopedists and interventionalists to get

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Summation - Mr. Mazurek

1 more lasting relief. He never pretended to be more than he  
2 was, a pain doctor who prescribed some of the most popular  
3 medicines on the market. That alone is not criminal. That is  
4 not throwing away medicine and suddenly becoming a drug dealer.  
5 He did nothing less than what we do when we go to our family  
6 doctor who finds, for example, that we have high cholesterol  
7 and prescribes every one of us 40 milligrams of Lipitor per  
8 day.

9 The government tries to use, throughout this trial  
10 they tried to use these meaningless statistics to try and  
11 convict a man. Think about this cholesterol doctor. What if  
12 the evidence showed 99 percent of his patients are getting 40  
13 milligrams of Lipitor. According to the government, he must be  
14 a drug dealer. The statistics show it. That is what the  
15 government is trying to do here in this case. Too much of the  
16 same drugs, he must be guilty.

17 But the medical experts say no. It is not the  
18 quantity that matters. You even heard that from the government  
19 expert, Dr. Gharibo, when he was presented with the standards  
20 of the New York State medical board. It's how the doctor  
21 conducts his practice. And the evidence here of all the  
22 patient visits that were presented to you throughout this  
23 trial, they show only one thing, that Dr. Mirilishvili always  
24 treated his patients as a doctor, not a drug dealer.

25 Now, the judge is going to instruct you on the law,

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Summation - Mr. Mazurek

1 but I expect that she is going to tell you that you can't  
2 criminally convict a doctor if he reasonably believed that he  
3 was exercising legitimate medical judgment and acting within  
4 generally accepted practice. This is really important. We are  
5 sitting in this courtroom today in a criminal case, not in a  
6 medical malpractice case, not a review of whether  
7 Dr. Mirilishvili should keep his medical license. This is a  
8 criminal drug case. And you cannot convict a doctor if you  
9 believe that all the evidence showed was that he just wasn't a  
10 very good doctor. You cannot convict this man even if you  
11 believe he was a bad doctor. As the Court I expect will  
12 instruct you, you can only convict Dr. Mirilishvili if his  
13 practice amounted to not being a doctor at all. Only if you  
14 believe that the government proved beyond a reasonable doubt  
15 that he rejected medicine entirely and became suddenly a drug  
16 dealer, and they did not prove that from the evidence presented  
17 in this case. They did not prove beyond a reasonable doubt  
18 that he suddenly abdicated his role as a doctor at age 65.

19 Let me tell you that the government spoke a lot in  
20 their closing statement this morning in gross exaggeration  
21 about speculation that they want you to think about, about what  
22 Tasheen Davis' patient visit was like, what Raymond Williams  
23 was talking to the doctor behind closed doors about, what  
24 conversations may have been made on a telephone call that was  
25 not recorded. I want to ask you, and I know you have listened

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Summation - Mr. Mazurek

1 to me way too long in this case as it is, but I wanted to ask  
2 for your attention just in the next hour or so to review  
3 something not based on exaggeration and speculation. I want to  
4 focus on the evidence that came in at this trial and what you  
5 have taken oaths as jurors that you are going to review, not  
6 with prejudice or bias about maybe what you think about  
7 oxycodone or whether the doctor was too free in his  
8 prescriptions of an opioid or whether opioid treatment would be  
9 right for you or me. That's not what we are talking about.  
10 What your job as a juror to do, each and every one of you, is  
11 to review the evidence that came in in this case and whether  
12 the government proved beyond a reasonable doubt the elements of  
13 this crime, with the most disputed evidence or the most  
14 disputed issue being whether Dr. Mirilishvili did not act like  
15 a doctor and whether the government proved that in this case.

16 What I am going to ask is that you think about all of  
17 the evidence that you have heard about what Dr. Mirilishvili  
18 did in his patient visits, in his examinations. And that  
19 evidence, the evidence that you heard on the tape of Jose  
20 Lantigua, in the doctor's own words, in the testimony of Anna  
21 Torres, in the testimony of Altagracia Medina. You heard the  
22 doctor was acting like any one of us would expect a doctor to,  
23 that he really believed he was taking care of their pain.

24 Remember that moment in one of the recordings with  
25 Jose Lantigua, the follow-up visit, when Jose Lantigua just

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Summation - Mr. Mazurek

1     lied because he was acting on behalf of the DEA and said that  
2     the medication, you know, helped his pain. The natural  
3     reaction -- the doctor just shouted out halleluiaah because  
4     that's what he wanted to do. He wanted to take care of his  
5     patients' pain. That's what this man has done all his life.

6             Even the government witnesses. The only patients we  
7     have heard in this entire trial from the government are two  
8     cooperating witnesses, two convicted felons who have every  
9     motivation in the world to lie to every one of us. And you  
10    know what they said, Mr. Leonard and Mr. Correa. They said  
11    they lied to the doctor in their own patient visits.

12            Now, think about this for a moment. Think about what  
13    the government wants you to believe. They want you to believe  
14    that in an office, in a small office room -- you saw pictures  
15    of it -- that is no more than half the length of this  
16    courtroom, that when Abraham Correa and Dr. Mirilishvili are  
17    alone, just the two of them, in an examination room and the  
18    government says that Dr. Mirilishvili, he's in on this, he  
19    wants to help Correa sell his prescriptions. What happens  
20    inside that room when it's just the two of them? Abraham  
21    Correa, the testimony in this case, the evidence in this case  
22    is that Abraham Correa says, I lied to the doctor. He lied on  
23    his initial patient visit. He lied in his follow-up visits and  
24    that last visit that the government says is the crux of their  
25    Count Two of this indictment on January 10, 2013, he has lied



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Summation - Mr. Mazurek

1 to him then. That's the testimony in the case.

2           Whatever reason, if the doctor is in on it, would  
3 Abraham Correa continue to lie to the doctor in these patient  
4 visits? No one is there. No one is there. It's just the two  
5 of them. But that's the testimony in the case. It does not  
6 make sense unless one thing, ladies and gentlemen, unless  
7 Dr. Mirilishvili is just believing that he is prescribing  
8 medication to someone who needs it and acting within the course  
9 of medical practice. Why else? Why else would Correa have to  
10 lie? After he has already gotten the job as a security guard.  
11 It does not make sense.

12           There is no evidence, no evidence presented in this  
13 trial that Dr. Mirilishvili ever intentionally prescribed  
14 oxycodone outside the usual course of practice, no evidence  
15 that he sold scrips without a physical examination, no evidence  
16 that he gave prescriptions to sell to other people or told  
17 office staff to go out and sell it to others, no evidence that  
18 he was collecting money for pills.

19           For goodness sake, what the evidence does show is that  
20 he worked with four different urine labs and he was being  
21 undermined every step of the way by his office staff with those  
22 urine lab reports. We heard it continuously from Correa and  
23 Leonard. We are going to look at some of that testimony  
24 shortly.

25           But you heard from Dr. Gharibo, the government's

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Summation - Mr. Mazurek

1 expert. He didn't even have to hire a urine lab. It wasn't  
2 even required. What kind of cover is that where he's making it  
3 more difficult for himself and he keeps trying to do it better?  
4 And the government says, that's just evidence. That's evidence  
5 right there that he's trying to make it harder for us, the  
6 government, to find him. That's certainly looking through  
7 someone's conduct through dirty lenses, right.

8 What the evidence shows, it is not just a cover. It  
9 just trying to do the right thing. It's hiring a lab that's  
10 going to be more transparent. It's getting to AFTS and you  
11 heard we brought Chris Dillon to the stand, the sales  
12 representative for AFTS, and the doctor said, oh, a secured  
13 portal, directly linked us to Practice Fusion. Made things  
14 better.

15 You know what. You heard from Damon Leonard, what  
16 that action of the doctor did? Didn't help a conspiracy. It  
17 didn't make it easier for the drug guys who are trying to  
18 infiltrate Dr. Mirilishvili's practice. It didn't make it  
19 easier for them to sell. It stopped the overrides. How does  
20 that further a conspiracy? It in fact made it harder to  
21 accomplish its criminal objective. Dr. Mirilishvili did not  
22 enter into any criminal conspiracy with Damon Leonard or  
23 Abraham Correa. It did not happen.

24 The government presented not a single independent  
25 patient witness in this entire trial out of the thousands that

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Summation - Mr. Mazurek

1 he treated, not one. And their whole theory of this case is  
2 based on the fact that his practice was an overwhelming sham  
3 where no medicine was being conducted. Otherwise, why would  
4 they show that big pie chart that showed 13,000 prescriptions  
5 were written. It has only the relevance if you believe that  
6 the government has shown that the entire practice or at least  
7 the overwhelming majority, as they say, was based on drug  
8 dealing and not medical practice. But where is the evidence?  
9 Where is the evidence of that? We heard from two people and  
10 they were both cooperating witnesses and not a single  
11 independent patient.

12 Now, we don't have a burden, you heard the judge say  
13 that over and over again in this case, because that's the law.  
14 The government has the burden of proof throughout this trial.  
15 But we presented two witnesses, two patients. Compare our two  
16 patients with the government's two patients, Anna Torres and  
17 Altagracia Medina. Do you have any doubt, any doubt at all,  
18 ladies and gentlemen, that these two witnesses were patients  
19 who had real pain, who had real injuries and were given real  
20 medical attention by the doctor? Indeed they had no motive to  
21 lie, no bias in favor of the doctor. They were truly  
22 independent witnesses.

23 And they told you something that in fact you already  
24 expected to hear, that Dr. Mirilishvili treated them according  
25 to his good-faith belief about pain meds. You expected to hear

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Summation - Mr. Mazurek

1 it because you had already heard it in his own voice during the  
2 government's case and that is how Dr. Mirilishvili performed an  
3 examination with the undercover Jose Lantigua. You heard how  
4 he would read medical records, how he would converse with the  
5 patient about their past family history and surgical history,  
6 how he would make referrals out to physical therapy or  
7 orthopedists, how he would determine if the pain had been long  
8 term and then he would put them on, yes, a fairly standard pain  
9 management regimen. But you also heard from Dr. Warfield that  
10 that was within the usual course of treatment. Prescribing  
11 everyone Lipitor is not acting as a drug dealer.

12 Now, again, I want you to compare both Anna Torres and  
13 Altagracia Medina's testimony with Damon Leonard and Abraham  
14 Correa. They were drug dealers, confessed drug dealers.  
15 Correa was a career criminal and Leonard, he appeared to be an  
16 eager protege. Both now seek from their testimony in this  
17 trial a get-out-of-jail card. Both have incredible motive to  
18 lie. In fact, from this witness stand in this case we know  
19 they both lied from that witness stand. We heard Damon Leonard  
20 deny even recordings in his own voice of what was taped of him  
21 before. Brazen. Brazen to say right in this court when you  
22 swear to tell the truth, and that's what you are supposed to be  
23 basing for evaluation of, that he would lie even when he heard  
24 his voice on recorded tape. And that is the evidence that the  
25 government wants you to rely upon to convict Dr. Mirilishvili.

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Summation - Mr. Mazurek

1 You can discount. You will hear their testimony entirely if  
2 you believe they lied to you. And I suggest you should.

3 Now, I am going to review on the screen the evidence  
4 of the patient visits that you heard about in this case with  
5 Dr. Mirilishvili. And I ask you when you are back in the  
6 deliberation room to review that evidence, to review the  
7 recordings, to hear Dr. Mirilishvili in his own words and  
8 whether those words sound like the words of a drug dealer or a  
9 medical doctor who is acting in good faith, how he asks the  
10 patient about pain.

11 Now, you heard Agent Muller on the stand the very  
12 early parts of his trial saying that he was giving instructions  
13 to his confidential source, Mr. Lantigua, not to talk about  
14 pain, but we know that that's not what happened in that  
15 interview, that Dr. Mirilishvili asked about whether Lantigua  
16 felt the pain in your lower back sitting down, which leg, left  
17 or right. And this transcript, CS is the words of Jose  
18 Lantigua, and he does say sometimes both. And when he's asked  
19 how long, how long did you have that pain, Mr. Lantigua  
20 responded, it's been a while already. I think it's been more  
21 than almost eight months or a year. Again, the kind of thing  
22 that you want to know if you are a doctor, not a drug dealer.  
23 Did he have electronic pain? He asked Mr. Lantigua to describe  
24 that pain, what kind of sensation was felt? Was it electrical,  
25 pulsating, shocks or stabbing, and Mr. Lantigua continued to

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Summation - Mr. Mazurek

1 lie to the doctor. He said: It's like electricity and like  
2 shocks.

3 You heard Dr. Warfield in her testimony. Doctors are  
4 not meant to be detectives. They are not supposed to doubt  
5 what their patients are telling them. They are actually there  
6 to help the patient in response to what the patient tells them.  
7 And Mr. Lantigua was clearly telling the doctor, as was  
8 Mr. Correa, as was Mr. Leonard, as was Ms. Medina, as was  
9 Ms. Torres, that they were in pain. And the doctor performs a  
10 diagnosis. He actually tells Mr. Lantigua, based on the MRI  
11 report that he reviewed, which earlier this morning  
12 Dr. Warfield reviewed right in front of your eyes and said that  
13 it looked to her to be MRI report that suggested a pinched  
14 nerve and disk, and to her it indicated that the person would  
15 feel pain.

16 So based on that and the doctor's review of questions  
17 that he asked his patient, he said, you should think about  
18 surgery. Then he explains why, because your nerve was  
19 rumbling, your nerve was damaged. This is the evidence in the  
20 case. The times that the government used the secret device of  
21 putting a recording on someone is when we heard the truth  
22 because you can't change the recording. And you heard it in  
23 the direct words of Dr. Mirilishvili, you heard it before in  
24 the words of Damon Leonard. But the recordings, I ask you, go  
25 back in the jury deliberation room and think of what you know

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Summation - Mr. Mazurek

1 is true and what you have heard from these recordings.

2 The patient visit continued. By the way, according to  
3 Dr. Gharibo, 20 to 30 minutes is how much an initial patient  
4 visit is normally how long it normally is. And that's how long  
5 the recording is of Dr. Mirilishvili's initial patient visit  
6 with Mr. Lantigua. If he's really just be being a drug dealer,  
7 why is he doing it? He doesn't know that Mr. Lantigua is  
8 wearing a recording device. He also says, I'm going to refer  
9 you out to a specialist, interventional pain management and an  
10 orthopedic doctor. Because you see that's what the practice  
11 was. Dr. Mirilishvili was not going to cure you. He was going  
12 to give you a set of pain medication that you heard from expert  
13 doctors was the most popular around in opioid treatment and has  
14 been the longest around according to Dr. Warfield. He was  
15 going to refer you to other places so that maybe you can get  
16 better through surgery or therapy.

17 But his role was a temporary one. And the fact that  
18 he had a standard set of medications to give, that, ladies and  
19 gentlemen, doesn't make him a drug dealer. In fact, the  
20 recording shows that the doctor, he explained each and every  
21 one of the medicines that he gave for the prescription. He  
22 didn't base it on speculation or, let's just -- I'm throwing  
23 these prescriptions in. He explained the medical reasons why  
24 he was prescribing Neurontin, in order to shut down the chronic  
25 pain down your spinal cord. And then the Elavil of 10

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Summation - Mr. Mazurek

1 milligrams twice a day to shut down for descending pain. He is  
2 explaining it as a doctor would, as a doctor would. And you  
3 heard that each one of these medications that he prescribed  
4 were typical medications used in the pain management doctor's  
5 practice.

6 A lot has been said from the government about  
7 insurance versus cash payment as if getting cash payments was  
8 somehow enough to convict a man. He even asked Mr. Lantigua  
9 about insurance. Do you have insurance to balance the expense?  
10 And the man said no. Now, talk about insurance in a little  
11 bit. But think about it. The record shows not that the doctor  
12 said I'm not taking any insurance. He was on Medicaid and HMOs  
13 for Medicaid. He was able to provide and he did provide and  
14 the records are in the government's evidence, there are  
15 spreadsheets that you can look at in Government Exhibits 1209  
16 and 1210 which showed that he bills hundreds of thousands of  
17 dollars a year in insurance claims. The government's view is,  
18 he is staying away from insurance so he is not going to get  
19 audited, but he's submitting claims to the government in  
20 Medicaid insurance. He's even asking about insurance on the  
21 very recording in this case. That, ladies and gentlemen, is  
22 medical care. That is the evidence that the government has  
23 presented to you that can't be rebutted on cross-examination  
24 because it's what was reported on tape.

25 Now, the government said in its closing remarks, I



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Summation - Mr. Mazurek

1 think Ms. Cucinella said, you know, is this what pain  
2 management should be. That's not the question before you. As  
3 I've said earlier, that's not the question in this criminal  
4 case. We are not deciding what is the best pain management for  
5 all people who come to a pain management center. We are here  
6 to see whether what Dr. Mirilishvili was doing during the time  
7 of the indictment was practicing medicine at all.

8 The other thing that the government said in its  
9 closing argument was, look at what the doctor did, compare the  
10 medications that he prescribed for Abraham Correa versus that  
11 nice old woman, Altagracia Medina. Put the government to the  
12 test of fact checking their evidence because the reality is, if  
13 you go to Government Exhibit 220, you will know that that's not  
14 true. Altagracia Medina was prescribed 60 milligrams, not 90  
15 milligrams a day of oxycodone, when she went to the doctor.  
16 Different from Abraham Correa. Altagracia Medina was  
17 prescribed Mobic, which the evidence was that it was a  
18 nonsteroidal antiinflammatory drug, not Abraham Correa. Correa  
19 was prescribed Neurontin, Elavil, and Ms. Medina was not.  
20 That's acting in medical judgment. That is making a  
21 difference. Don't let the government simply exaggerate the  
22 facts and say, it's all the same. The evidence does matter in  
23 this trial. It matters because the man's life is at stake in  
24 this criminal case.

25 Now, the evidence shows that Dr. Mirilishvili's

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Summation - Mr. Mazurek

1 medical practice changed. From January 12 through November 12  
2 he was in a group practice in the Bronx called Rampin Medical  
3 Care and he was one of several doctors there. In November 2012  
4 is when he opened his practice on West 162 Street in Washington  
5 Heights. His effort was to become a solo practitioner and he  
6 would have to hire his own staff.

7 Couple of points that I would like to make out.  
8 First, the government, and we will review these in a little  
9 bit, had these charts that show the number of prescriptions --  
10 again, what the government does over and over in this case,  
11 relying on statistics and data to inundate you, to prejudice  
12 you, to blind you to think that what Dr. Mirilishvili was doing  
13 must have been criminal.

14 We know nothing. There is no evidence in this case  
15 what Dr. Mirilishvili's case was in 2010 or 2011, when the  
16 first numbers on the government's series 100 charts came out.  
17 We don't know his patient population. We don't know whether he  
18 was one of several doctors. We know he was at the beginning of  
19 2012.

20 The government asks you to speculate and say, his  
21 practice changed, his prescription levels went way up in 2012  
22 through 2014 than it was it was in 2010 or 2011. But there is  
23 no evidence to suggest what kind of practice he even had back  
24 then. You cannot speculate, ladies and gentlemen. This case  
25 requires you to evaluate the evidence that came on this witness

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Summation - Mr. Mazurek

1 stand and the documents that have come into evidence.

2 Now, the government also has said a lot about the fact  
3 that when he moved to West 162 Street, they presented the  
4 testimony of Ben Lopez that this was not a medical office. It  
5 was a drug den. You remember the testimony of Mr. Lopez. He  
6 testified that, remember on cross-examination he said that  
7 within 24 hours Dr. Mirilishvili had not even hardly opened his  
8 doors, his neighborhood association was railing him, had a  
9 meeting with Dr. Mirilishvili and told him to get out within 24  
10 hours. What possible information could Mr. Lopez and his group  
11 have known about the doctor in 24 hours? They just didn't want  
12 him there. And where are all those lines of people that  
13 stretched down to Edgecombe Avenue? Where is the evidence of  
14 that? The few photographs that Ben Lopez came with from his  
15 homeowner's association showed a couple of fancy cars, one of  
16 which he probably owned, and a few people standing in front of  
17 the storefront. Where were the lines that stretched all the  
18 way down the avenue? There is no evidence of that.

19 And the person who was cross-examined by the  
20 prosecutor that we brought in, Christopher Dillon, was asked  
21 about, oh, security, that must be the evidence of a drug den.  
22 But when pressed, this is what Chris Dillon testified to. He  
23 said, just sort of generally speaking, in my experiences as a  
24 medical salesperson in New York City, it was, I encountered  
25 offices that had security people. The prosecutor said thank

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Summation - Mr. Mazurek

1 you. Having security at a medical office doesn't give you  
2 reason to believe that this man stopped being a doctor and  
3 became a drug dealer. Where is the evidence? Ladies and  
4 gentlemen, I'm just asking you to think and review the evidence  
5 back in the deliberation room.

6 What is the evidence that the government actually put  
7 on in this case? It came largely from two witnesses: Abraham  
8 Correa and Damon Leonard. And both of them in Government  
9 Exhibits 1201 and 1202 have these so-called cooperation  
10 agreements that you heard them testify about. The main  
11 provision that was repeated by both of these witnesses on the  
12 stand that they were most concerned about is highlighted on the  
13 screen.

14 And if this office, and this office is defined as the  
15 U.S. Attorney's Office, determines that the defendant has  
16 provided substantial assistance in an investigation or  
17 prosecution, this office will file a motion, and we heard about  
18 it, pursuant to Section 5K1 of the guidelines. This motion  
19 that they are hoping not to go to jail.

20 You heard the testimony of Abraham Correa explaining  
21 what he meant in his cooperation via the cooperation agreement  
22 that he signed. And this question was asked of him. And so  
23 the quid pro quo, if you will, with the government was that if  
24 I do tell you what you may want to know, then you have to  
25 promise me something. And that's what is embodied here in this

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Summation - Mr. Mazurek

1 agreement, 1201. He said, yes. That was the deal, right?  
2 Yes. And the only reason you have not been sentenced yet is  
3 because you had to testify in this case pursuant to the  
4 cooperation agreement, right? Yes. And at the time of your  
5 sentence you are hoping to get probation, right? Answer, yes.  
6 You are not going to look to the judge and say I'm ready to go  
7 prison. You want probation, right? That's the motive for  
8 Abraham Correa to come in and testify the way he did.

9 And Damon Leonard had the same motivation, ladies and  
10 gentlemen. Now, he, remember when it was posed on  
11 cross-examination, was asked, did you decide to cooperate right  
12 away? No. Why did you ultimately decide to cooperate?  
13 Because I didn't want to go to jail. You heard he was arrested  
14 back in December 2014 and he didn't start cooperating until the  
15 end of last year, the beginning of this year. And he did it at  
16 that point because he knew he could get one of these  
17 cooperation agreements. Think of what the government has  
18 already told you about or relied upon in its closing argument.  
19 They said, rely upon the fact that Damon Leonard said, and this  
20 came out in the evidence, that on February 20, of this year,  
21 just a few weeks ago, for the first time, Damon Leonard said to  
22 these government agents and prosecutors, when I was in the cell  
23 with Dr. Mirilishvili he was saying, there was this guy,  
24 Raymond Williams, and I can't believe he was fucking talking.  
25 That was the first time, first time, first time that Damon

G3FMMIR4

Summation - Mr. Mazurek

1 Leonard said -- a few weeks ago he already had his cooperation  
2 agreement. That's why he was saying those things. He wanted  
3 to get that deal so that when he was on the witness stand and  
4 he helps the government get what they want, which is a  
5 conviction, he doesn't have to go to jail. But where is the  
6 evidence? The voice of a man that we heard lied. Denied a  
7 recording of his own voice. That's what the government wants  
8 you to rely upon to convict my client? That is not proof  
9 beyond a reasonable doubt.

10 And Damon Leonard said it as well. He knows that if  
11 he pleads guilty to a federal felony there is a good chance you  
12 are going to prison, right? Yes. You don't want to go to a  
13 prison, right? I'm hoping not to, sir, he said. That's the  
14 reason you are here today. Yes.

15 Now, the other things that Damon Leonard would talk to  
16 you about and the government mentioned, the counterfeit pen  
17 that Dr. Mirilishvili used to check the cash and that's  
18 evidence of, of course, a drug dealer and not a medical doctor.  
19 But you know what, if that counterfeit pen was something that  
20 really existed, then you would have heard it from Abraham  
21 Correa, too, right, since he was the one who was also with the  
22 government and worked at Dr. Mirilishvili's office. You only  
23 heard it from Leonard. Would you be surprised if Leonard just,  
24 as a spur-of-the-moment thing started exaggerating? Did he  
25 seem to come across as that kind of witness to you?

G3FMMIR4

Summation - Mr. Mazurek

1 Now, both of these individuals, both of them, Correa  
2 and Leonard, throughout the case, continued, continued to say  
3 they lied to the doctor. Even with their cooperation  
4 agreements they said, yeah, we lied to him. And why?

5 Well, when Abraham Correa was a patient, he knew that  
6 the doctor had records of what was in the file. We showed you  
7 those records on cross-examination with Abraham Correa. And on  
8 the screen you see that he was asked about what was written  
9 there. Did you tell the doctor following the accident that you  
10 were LOC, loss of consciousness, and awaken in Mt. Sinai  
11 Hospital, where he's kept two weeks for observation and later  
12 on discharged from the hospital following a negative diagnostic  
13 test. That's what was in the notes of the doctor. Did you say  
14 that? Yes. And he told that you, right? Yes. That's the  
15 evidence in this case. That's why it's in the notes, right?  
16 Yes. And that was a lie? Yes. Abraham Correa confirmed what  
17 was in the doctor's note that that's what he told him.  
18 Remember when he was asked in the notes, it said, accidental  
19 falling from scarf steers, and it was determined that  
20 Dr. Mirilishvili's English, written English is always not the  
21 best. And Abraham Correa from the witness stand admitted that  
22 that meant what he told the doctor was falling from scaffolding  
23 stairs. Why did he need to tell him this exaggerated story if  
24 the doctor is in on it? It does not make sense.

25 The other thing I want to talk about Correa's patient

G3FMMIR4

Summation - Mr. Mazurek

1 visit, Correa made a big deal on the witness stand about the  
2 fact that, oh, I had a lower back MRI and doctor kept putting  
3 down that I hurt my neck and I never said that. But remember  
4 when an interesting moment in the case happened when  
5 Dr. Gharibo was testifying. I asked him, do you always just  
6 listen to what's on the MRI or do you listen to what the  
7 patient says? And I asked him that very question. What if you  
8 as a pain doctor received an MRI that showed a lower back  
9 injury and the patient said that they have pains in the neck?  
10 He said he would listen to the patient more than relying on the  
11 MRI.

12 That's the evidence in the case and that's what  
13 happened here. That's what happened here. The government's  
14 own expert corroborates that. As I said before, with only two  
15 people in the room, being Correa and the doctor, what potential  
16 reason is there for Correa to continue to lie if he's in  
17 cahoots with the doctor? Absolutely none.

18 Now, he continued to lie to the doctor. Remember  
19 there is a series of questions that asked him about whether he  
20 was -- when the doctor asked him if he wanted to be a security  
21 guard, whether he told the doctor the truth about his past.  
22 And he said, I have nothing to hide. I'm not ashamed of my  
23 past. Then I asked, well, did you volunteer the information?  
24 If you had nothing to hide, would you tell him, listen, I have  
25 got a bad back, I'm on probation, I am trying to make a better



G3FMMIR4

Summation - Mr. Mazurek

1 life? Did you tell him that? The answer was no, I did not.  
2 My objective was to get an oxycodone prescription, so nothing  
3 else really mattered at the time.

4 That's the point, ladies and gentlemen, that these  
5 guys, Correa and Leonard, they were looking to make their own  
6 way, make their own money. They knew if they told the doctor  
7 the truth, they wouldn't get it. That's why they continued to  
8 lie. That's what the evidence was at this trial. And it was  
9 repeatedly done in this trial. It was not a single piece of  
10 evidence that showed you directly from the patient notes, from  
11 the recorded conversations anything other than the fact that  
12 the doctor was lied to.

13 Another time a series of questions. You never told  
14 him you were a convicted drug dealer. You never told him you  
15 were buying fake MRIs. You never told him you were accepting  
16 bribes for patients to get an appointment. The answer was  
17 always no.

18 Let me say something about the government's argument  
19 about fake documents. You saw the MRI this morning for Jose  
20 Lantigua. I urge you to look at the MRIs for Abraham Correa  
21 and Damon Leonard. They are medical reports. That suggests  
22 not that everything is normal, but that people have injuries,  
23 bulging disks, herniated disks, and pinched nerves. The  
24 government says, take a look. It looks like the font is  
25 different or there is spotty paper or the names are crooked on

G3FMMIR4

Summation - Mr. Mazurek

1 the page. It looks like it was cut and pasted. That is not  
2 proof beyond a reasonable doubt.

3 Dr. Warfield testified that she reviewed the files and  
4 she didn't say, I noticed all of these fake documents that the  
5 logos aren't right or the spacing is off, the formatting is  
6 wrong. That is not proof beyond a reasonable doubt. Anyway,  
7 the doctor had actual visits with people.

8 Larry Ashby, one of the patient files that the  
9 government suggests had the name of a female patient within the  
10 text of the MRI referral or just the referral letter, not even  
11 the MRI report. You even heard from Dr. Gharibo that there is  
12 cut and pasting done all the time in medical records. That  
13 doesn't mean that you don't meet the patient and you don't  
14 listen to what they have to say. Plus, do we even know that  
15 Larry Ashby was one of the patients that Dr. Mirilishvili tried  
16 to verify by making a phone call or had his office staff make a  
17 phone call? That's not in evidence. We don't know, but we  
18 know it happened in the case because that's what even the  
19 government witnesses testified about. Not proof beyond a  
20 reasonable doubt.

21 What we do know is that Abraham Correa, when he worked  
22 there; Damon Leonard, when he worked there; Jomarís Javier,  
23 when she worked there; and Augustine Cruz, when he worked  
24 there, all took bribes from patients so they could line their  
25 own pockets. As Correa testified to, you were aware that it

G3FMMIR4

Summation - Mr. Mazurek

1 was typical that what was going on at that point in time in the  
2 office, that workers were all trying to make more money by  
3 accepting bribes from patients who are wanting to get a visit  
4 at the office. Yes. And it was you, it was Javier, it was  
5 Cruz, and later it was Leonard, correct? Yes. And none of  
6 you, did you ever tell the doctor that you were taking bribes  
7 from his patients to get in? No, I did not. And the testimony  
8 is the same for Damon Leonard. No, I did not.

9 Damon Leonard was asked. And you continued to lie  
10 throughout the examination, the patient examination, because  
11 you wanted to get a prescription of oxycodone? Yes, sir. And  
12 you continued to lie to him on subsequent visits and follow-up  
13 visits? Yes, sir.

14 All the testimony in this case from these two  
15 witnesses are the same. Every bit of testimony said these  
16 witnesses, patient witnesses, lied to the doctor. They lied to  
17 the doctor about bribes, about fake paperwork, but they never  
18 told him about overrides, the money they were putting in their  
19 own pockets.

20 And this morning the prosecutor stood up and said, oh,  
21 you don't think Harvard would hire Damon Leonard? Why not?  
22 What makes Damon Leonard someone Harvard wouldn't hire. You  
23 heard he was college educated. He had prior jobs. He was  
24 raising three kids. Why wouldn't you hire him?

25 One thing I ask you to think about is how Damon

G3FMMIR4

Summation - Mr. Mazurek

1 Leonard presents himself. Damon Leonard would get on the  
2 witness stand. He was on the witness stand three days. On the  
3 first day he was quiet and timid and he seemed like he wanted  
4 to help and he wanted to answer the questions. And then as the  
5 cross-examination went on, his demeanor changed. He became  
6 more aggressive, more defensive when he was challenged with his  
7 own voice on recordings. I would suggest to you that Damon  
8 Leonard is very capable, a very educated young man, very  
9 capable of coming across to someone, can you please give me a  
10 chance and give me a job and I can be a responsible person to  
11 help you. I don't think that the government is right to say,  
12 Harvard would not have hired Damon Leonard.

13 Why not? Damon Leonard did not say when he was hired  
14 by Dr. Mirilishvili, I'm being hired here so I could become a  
15 drug dealer. He was hired because he says I can be a  
16 responsible person who can really work well in this office.  
17 That's what happened. That's what the evidence shows and the  
18 evidence also in his own testimony that he continued to lie to  
19 the doctor.

20 There was no conspiracy between Dr. Mirilishvili and  
21 Correa or Leonard. In their own testimony Abraham Correa was  
22 asked, isn't it a fact that while you worked at the clinic that  
23 Dr. Mirilishvili relied upon Javier to furnish him with a copy  
24 of the PMP printout? We have heard a lot of testimony about  
25 the prescription monitoring program. He said yes.

G3FMMIR4

Summation - Mr. Mazurek

1 And Dr. Mirilishvili would get rid of any patients  
2 that he would suspect were filling prescriptions in New York  
3 and in other states at the same time from other doctors. Yes.  
4 That's not cover. That's doing what he was supposed to be  
5 doing and that's what the evidence showed.

6 Further, he was questioned, did you know while you  
7 were working there that Dr. Mirilishvili would check or verify  
8 MRI or referrals? The answer was yes. Yes, he did. That's  
9 not cover. That's doing what he's supposed to be doing. He  
10 couldn't check every MRI, but the testimony from both  
11 government cooperators said he did check and that's what he was  
12 supposed to be doing. He wasn't deliberately ignoring signs.  
13 He was actually doing things that a doctor is expected to do  
14 and that's the evidence in the case.

15 Damon Leonard was asked, did you have any  
16 conversations with Dr. Mirilishvili about your role as a crew  
17 chief? He said no, no conversations. Neither of these two  
18 guys, who worked over a year with a doctor, they didn't come in  
19 and say that they talked about how much money they were going  
20 to make together in their drug conspiracy. What kind of  
21 conspiracy is that? There is no evidence of it. Only  
22 deception. Damon Leonard was asked, as Correa was, about the  
23 PMPs and his answer was, you had a conversation with someone  
24 from the New York State DEA because the doctor asked you to do  
25 it. Yes, sir. Because he wanted to make sure the information

G3FMMIR4

Summation - Mr. Mazurek

1 was correct and accurate on these. Yes. And sometimes there  
2 are people who call the doctor to let him know if there was a  
3 mistake. For example, I think you mentioned a pharmacist by  
4 the name of Frank from Ashcan Pharmacy, right? Yes. This is  
5 evidence of what the doctor was doing in his own office to make  
6 sure that the office was run as a medical office. That's what  
7 you would expect and that's what the testimony showed. You  
8 never told the doctor you were selling your prescriptions?  
9 Still the answer is no. Where is the evidence of a conspiracy?  
10 With the doctor?

11 Leonard was further asked, you never told the doctor  
12 you were bringing patients to the clinic? When? Ever. No.  
13 You never told the doctor you were doing overrides with  
14 Augustine and Javier? And the Court said, this is a yes or no  
15 question. No, sir. There is never any evidence to suggest  
16 that what the office staff was doing was being communicated to  
17 the doctor.

18 And any time that fake paperwork was talked about or  
19 discovered or PMPs came back positive, the evidence showed that  
20 the doctor took what action you expected a doctor to take and  
21 discharge patients.

22 Damon was asked about the MRIs. And the instruction  
23 he was given by the doctor, you had to call the number on the  
24 MRI and ask if the person was a patient there, right? That was  
25 part of the verification process. That was a part of it. If

G3FMMIR4

Summation - Mr. Mazurek

1 the person on the other end of the phone said yes, this person  
2 is a patient, then you would sign and say verify, right?  
3 That's what I was told by the doctor. Damon Leonard is not  
4 saying on the witness stand the doctor told him, just put  
5 verify and we will use it as cover for the files.

6 This is the testimony that even the government's  
7 cooperators gave. They were not working together. They were  
8 at odds with one another. And the pharmacies, the same thing.  
9 Damon Leonard was asked, in September 2014, and he was  
10 challenged on this because he had to admit it because it was on  
11 the recording. If the pharmacy called, you had to click it  
12 over to the doctor. You couldn't take that call. You had to  
13 give it to the doctor. Again, I was told by the doctor that he  
14 would verify everything because I wasn't a doctor, so I  
15 couldn't verify anything. The doctor was doing things again he  
16 was supposed to be doing.

17 Now, what the evidence shows in this case is that for  
18 every witness like Altagracia Medina and Anna Torres, there may  
19 have been a witness like Abraham Correa and Damon Leonard. But  
20 the doctor was not a detective and was not expected to be a  
21 detective in his usual medical practice. You heard that from  
22 Dr. Warfield.

23 And what this case does not show you is that 13,000  
24 prescriptions that the government generalizes about, an  
25 overwhelming majority of them were people like Correa and

G3FMMIR4

Summation - Mr. Mazurek

1 Leonard. In fact, the evidence is actually the opposite  
2 because I asked Abraham Correa the question about how much of  
3 these crew chiefs were you working with. He said about eight  
4 or nine. And he said each one had about 10 patients or so that  
5 they were bringing in.

6 The numbers, the numbers, ladies and gentlemen, that's  
7 not a whole lot of patients. Maybe what, 80, 90, a hundred  
8 patients at most? How many patients did you hear went to  
9 Dr. Mirilishvili's practice? Thousands. The government wants  
10 to paint a certain picture, but that picture was not painted by  
11 evidence. It's painted by speculation which you cannot rely  
12 upon in your review of the evidence in the case. It just  
13 didn't happen that way.

14 And Abraham Correa explained -- you heard from the  
15 government and they put in an exhibit to show that with respect  
16 to some patients who are found to have suspect urine screening  
17 tests that John Galanter from Nevis Labs testified about. You  
18 heard that these patients later were put back into the system  
19 and continued to see the doctor. Abraham Correa explained to  
20 you why. He was asked the questions: Did you also know the  
21 office personnel routinely ignored the doctor's request and  
22 rescheduled the patient anyway? Yes. And was that, sir,  
23 because it was easy to fool the doctor and have the patient  
24 return because of the volume of patients that he saw? And  
25 Correa, he hesitated, right? Now, he's cooperating for the



G3FMMIR4

Summation - Mr. Mazurek

1 government and he said, I don't know if he was being fooled,  
2 but they just gave you appointments. Then when he was  
3 challenged with the words that he gave on the very day of his  
4 arrest, on May 1, 2014, that's what he told the agents.

5 When he was confronted with his arrest and his  
6 three-time felony and the fact that he was in a lot of trouble,  
7 at that moment in time, before he had a chance to think about a  
8 cooperation agreement and how I am going to spin this that's  
9 going to be better for the prosecutors, he was asked, when you  
10 talk to them on May 1, 2014, it was easy to fool the doctor and  
11 have the patient return because of the volume of patients  
12 Dr. Mirilishvili saw. And his answer eventually was yes.  
13 Because that's what they were really doing, these guys. They  
14 were seeking to fool the doctor so they could line their  
15 pockets with money.

16 Damon Leonard, you heard him on the recording saying,  
17 the doctor is getting smart, no more overrides. He couldn't do  
18 the overrides to falsify the findings in the laboratory report,  
19 right? He couldn't do it anymore. That's what you are telling  
20 Correa. Yes, I couldn't do it anymore. And that was on the  
21 recording. He couldn't do the overrides because of the actions  
22 that this man took. That's actually against the conspiracy  
23 that people were having against him, the actions the doctor  
24 took. And that was on the recording. If you are working  
25 together you don't say the doctor is getting smarter when you

G3FMMIR4

Summation - Mr. Mazurek

1 are talking between conspirators. You don't say that because  
2 the doctor didn't know.

3 Damon Leonard, you heard a lot of testimony from him  
4 and you know that he could be ruthless and he is going to do  
5 whatever it is that's right for him. And when he doesn't like  
6 the answer, this is what he always said. It's just talk. It's  
7 just talk when he talks about on the recording that he labeled  
8 as a friend Amanda Nunez. He was asked, if she didn't do what  
9 she wanted, you would threaten her with guys going to her  
10 apartment to floor her. Is that what you do? He said, sir,  
11 that was just talk. That's what you said though, right? Yes.  
12 When you didn't know you were being recorded, right? The  
13 answer, I didn't know. I was just talking to Correa.

14 These are the witnesses the government put before you  
15 and they rely almost exclusively in this case to convict the  
16 doctor. It is not proof beyond a reasonable doubt. It is just  
17 talk in the words of Damon Leonard.

18 And I expect that the Court is going to instruct you  
19 that if you find that any witness, including a cooperating  
20 witness, has testified falsely as to any material fact in this  
21 trial, the law permits you to disregard the entire testimony of  
22 that witness. And I suggest to you that based on the lies that  
23 were told in this courtroom from this witness stand in  
24 cross-examination, time and time again by Abraham Correa and  
25 Damon Leonard, you should do exactly that. It is not competent

G3FMMIR4

Summation - Mr. Mazurek

1 and reliable evidence.

2 The people whom Dr. Mirilishvili hired in his pain  
3 management staff when he moved over to 162nd Street, yes, there  
4 is no question in any of our minds he should have gone to  
5 Craigslist or maybe to Columbia Hospital, but he didn't. He  
6 took the easy route and he took people that he got to know as  
7 patients in the office, and he hired them. That didn't mean  
8 that he was hiring them to join a criminal conspiracy. In  
9 fact, what were the actions that he actually took after he  
10 hired them? He fired them all except for Leonard, who was the  
11 sole survivor. He fired them all. That is not acting in a  
12 criminal conspiracy, ladies and gentlemen. That is doing what  
13 he should be doing once he found out information that they  
14 weren't doing their jobs correctly.

15 And the fact that he rehired Jomaris Javier, you heard  
16 about that testimony, the government didn't really speak a lot  
17 about it in the closing argument, but you heard the testimony  
18 from Damon Leonard that he had to admit, because of the  
19 recording, that Javier was rehired because she had a baby, she  
20 was out of work. She was, according to Leonard's testimony,  
21 almost suicidal. She was taking pills. She was down on her  
22 luck. And she called the doctor, you heard, on Father's Day,  
23 which was also his birthday, and asked for the job back. That  
24 evidence is not evidence that Dr. Mirilishvili is a drug  
25 dealer. It's that he rehired her. It's evidence that he's a

G3FMMIR4

Summation - Mr. Mazurek

1 compassionate human being. That's all it is. Don't let the  
2 government tell you otherwise.

3 Now, Damon Leonard. Talked about him a lot. What  
4 does the evidence show? He did become Dr. Mirilishvili's  
5 trusted office manager because of the fact that he lied to him  
6 or didn't tell him what he was doing. He interacted with drug  
7 labs. You heard Chris Dillon say that, oh, yes, the young man  
8 who assisted me in doing the requisition forms and getting the  
9 specimen cups and doing the things to help out. He interacted  
10 with pharmacies in referring doctors. He told the doctor he  
11 could manage the office by himself. What he didn't tell is  
12 that he became the gatekeeper to the drug dealers, that he  
13 falsified medical records and test reports, that he and the  
14 fired staff had been taking overrides and bribes from patients.

15 The reason that Anna Torres had trouble getting in the  
16 office was not because of Dr. Mirilishvili. She was there  
17 during the time that Abraham Correa was there. He wasn't  
18 letting her in because she probably didn't pull out an extra  
19 \$200 to give that guy extra money. That wasn't something that  
20 Dr. Mirilishvili knew about. The evidence doesn't show that.

21 You heard the testimony of Damon Leonard. He said he  
22 was at the helm. He said he was at the helm of the office as  
23 the office manager. That's not the helm that he was talking  
24 about. You remember him denying that it meant anything more  
25 but you knew that all the patients had to come through him and

G3FMMIR4

Summation - Mr. Mazurek

1 he was prospering the most, the most from his own operation,  
2 not the doctor's.

3 You heard from him that he thinks he made \$5,000.  
4 That didn't make sense. He said he had eight or nine patients  
5 for almost a year that he was able to get through. His niece.  
6 Where is the file? Do you see a file of a niece of Damon  
7 Leonard presented in the case?

8 (Continued on next page)

G3F7MIR5

Summation - Mr. Mazurek

1 No evidence, none. A lot of evidence of charts that  
2 the government has presented in the case, evidence of phone  
3 calls between people.

4 Raymond Williams, who you heard a lot about, who was  
5 Raymond Williams? We really don't know other than the  
6 testimony that Correa gave that he was a so-called crew chief  
7 and that he showed up in the office every now and then and  
8 sometimes behind closed doors, but we don't know what that was  
9 all about. There is no evidence of that. Who was this guy  
10 Raymond Williams? What was his patient visits? What happened  
11 with respect to his relationship with the doctor? We don't  
12 know; they didn't come into evidence.

13 Carolyn Middleton, that name never even came up in the  
14 trial. We have no idea who she is or what she represents on  
15 this chart, but apparently she called Dr. Moshe. Other people  
16 who were just randomly called. He called pharmacies. What  
17 does this mean? Well, I tell you what it does mean, ladies and  
18 gentlemen, is that if you go back to the 700 series of the  
19 government's exhibits, you are going to see that Dr. Moshe  
20 called tons of people every single day, that he had an average  
21 of 20, 30 calls, that he used his cell phone for business and  
22 he had many calls. So what? It's not proof beyond a  
23 reasonable doubt that he was a drug dealer.

24 And the same with his home calls. You heard from  
25 Agent Castro, he didn't check to see how many patients were

G3F7MIR5

Summation - Mr. Mazurek

1 calling the doctor, but you also heard it's within usual  
2 medical practice for a doctor to give out his number to  
3 patients. What does that prove? What does that prove?

4 Another thing that the government presented in one of  
5 its many charts, Government Exhibit 106, the top five  
6 pharmacies. This is evidence of Dr. Moshe being a drug dealer.  
7 The top one had 12 percent of his entire prescriptions filled  
8 out of that. What does that mean? That he somehow had a  
9 special deal with a pharmacy? That's how patients were filling  
10 prescriptions? That was not proven. No evidence. And the  
11 government didn't even mention it in its closing argument.

12 But what we do know through the BNE records in  
13 evidence at Government Exhibit 901 is that there were hundreds  
14 of pharmacies that filled Dr. Moshe's prescriptions. No  
15 evidence of a conspiracy. No evidence of drug dealing. That's  
16 what happens in a medical practice.

17 And you even heard from Dr. Gharibo and Dr. Warfield  
18 that it's within the guidelines of the American Association of  
19 Pain Management to tell a patient to use the same pharmacy in  
20 the course of their treatment. There is no evidence. The  
21 government is grasping for proof.

22 Now again I talked about the pie chart that they  
23 presented about just the number, the quantity of prescriptions.  
24 And they want to convict him on quantity alone. In 2010 these  
25 were the prescriptions that they showed. As I said, there is

G3F7MIR5

Summation - Mr. Mazurek

1 no evidence of what kind of practice -- no evidence in this  
2 case whatsoever about what kind of practice Dr. Moshe had at  
3 that period of time. But they said, oh, his prescriptions  
4 changed over time, you see, this is only 68 percent of  
5 oxycodone. Well, the 20 some percent of the other slice of  
6 that pie was we heard the antiseizure medication Lyrica.  
7 That's what Dr. Warfield testified. It's a controlled  
8 substance, and that's why it was on this pie chart and showed  
9 up in the BNE records of New York State.

10 Now, in 2012 to 2014, oh, this pie chart looks  
11 terrible. Right? All of a sudden the doctor is giving out  
12 only oxy, and therefore he is a drug dealer in oxycodone.  
13 Well, you heard the testimony of Dr. Warfield -- and this is  
14 really important, ladies and gentlemen -- that statistics are  
15 not proof in and of themselves; you need to look at the  
16 underlying facts. Because what Dr. Warfield testified was that  
17 during this time period, in her review of the records, that  
18 what Dr. Moshe was prescribing at that time was the same type  
19 of medication as Lyrica, an antiseizure medication called  
20 Neurontin that wasn't a controlled substance, so it doesn't  
21 show up on the government's pie chart. But he was still  
22 prescribing antiseizure medication. The pie chart and the data  
23 is misleading. The underlying facts show that his prescription  
24 practice really didn't change.

25 The same if you look at the graph, the government said



G3F7MIR5

Summation - Mr. Mazurek

1 earlier that there was a dip in the prescriptions in February,  
2 and they connect that to the Dr. Terdiman situation, which was  
3 only talked about by Damon Leonard. But if you look carefully,  
4 there was a dip in January. That's before Damon Leonard says  
5 that Terdiman was arrested and changed the practice.

6 And who cares about whether that is true or not true?  
7 If in fact the doctor started taking steps to check his office,  
8 to check his people, to check his documents, he is not acting  
9 as a coconspirator in a drug conspiracy; he is acting like a  
10 medical doctor, and he is not guilty.

11 Money. Because this is the other big thing that the  
12 government has said is the reason why my client is guilty as a  
13 drug dealer. He was charging \$200 a visit for noninsurance  
14 patients and receiving about below \$100 on average for  
15 insurance. That's a medical standard. And you heard the  
16 testimony from Correa and Leonard, how much they were receiving  
17 by selling scripts on the street without telling the doctor,  
18 1500 to \$1800 per prescription. The government says he is at  
19 the helm, he's the mastermind, the doctor is the mastermind of  
20 this. The mastermind is not making much money if he is a drug  
21 dealer. That's not consistent with being a drug dealer; it's  
22 consistent with being a medical doctor.

23 Now the 1.7 million of cash in his house. This is  
24 what the evidence shows. The government put in closing  
25 documents that showed the Great Neck apartment that the doctor

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Summation - Mr. Mazurek

1 and his wife bought was at \$355,000. The bank accounts that  
2 are in evidence in Government Exhibits 605, 602 and 601 show a  
3 grand total at the relevant times in this case of \$5,974 in  
4 their bank accounts. And their retirement accounts that are in  
5 evidence, 607 and 606, a grand total of \$84.

6 So, I have a pie chart of my own -- it's not only in  
7 the provenance of the government -- and it shows the total  
8 holdings of the assets of the Mirilishvilis. And, yes, most of  
9 their money is in cash. But for a 65, now 67 year old man, to  
10 have this kind of asset compilation at this point in his career  
11 as a professional, is that evidence of a drug dealer because he  
12 kept it in cash, because this immigrant from the former Soviet  
13 Union didn't put it in the bank? We know the amount of money  
14 he had in the bank was only under 6,000. If he had \$1.7 in the  
15 bank, would they say he is a drug dealer? No. But only  
16 because he has cash?

17 And where is the evidence that this \$1.7 million came  
18 from his drug dealing during the time of the conspiracy? There  
19 is none. There is only evidence this is what he had in his  
20 apartment and he is 65 years old. It doesn't say when he got  
21 it. They didn't prove that. This is his life savings, ladies  
22 and gentlemen, he and his wife. It doesn't prove that he was  
23 acting not in the usual course of medical practice and not for  
24 legitimate medical purposes.

25 And let me show you one last thing about the money.

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Summation - Mr. Mazurek

1 The government says, oh, his tax returns, that shows you he is  
2 a drug dealer, he was underreporting his income. The tax  
3 returns in evidence during this time period show that he in  
4 2013 and 2014 declared more than half a million dollars of  
5 receipts, and the government says that's underreporting because  
6 we did this analysis of how many scripts were written and how  
7 much money he would have made or should have made if he got  
8 \$200 per script, and combine that with insurance proceeds.  
9 Well, there is no evidence, ladies and gentlemen, of accounting  
10 records. Where is the business records? They want to do this  
11 extrapolation and say now he is also a tax cheat. He is not  
12 even on trial for being a tax cheat.

13 This is not proof beyond a reasonable doubt.

14 Now know, they say he's the drug dealer? Damon  
15 Leonard and Abraham Correa, their witnesses, didn't even file  
16 returns. The government got no money and Damon Leonard  
17 testified the most I made in my drug sales is \$5,000; please  
18 give me a get out of jail free card. That is not appropriate,  
19 it's not evidence in this case that is sufficient beyond a  
20 reasonable doubt to convict Dr. Moshe for doing the things  
21 which the evidence shows he did in every single patient visit.

22 Now, the standard that I have on the screen is the  
23 legal standard that I expect that the court is going to  
24 instruct you on, and it's going to require you to find that the  
25 government proved beyond a reasonable doubt that Dr. Moshe did

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Summation - Mr. Mazurek

1 not act in the usual course of medical practice and not for  
2 legitimate medical purpose. That's what the government must  
3 prove. You see because he had a license; he had a license to  
4 prescribe. And in this case the most that we ever learned  
5 about in terms of a patient that he prescribed medicine to are  
6 the two convicted felons from the government's witnesses and  
7 the two patients we presented, and the 24 records out of over  
8 3,000 that the two expert medical witnesses had a chance to  
9 review.

10 The government says through speculation 13,000  
11 prescriptions were done outside the course of medical practice  
12 and not for legitimate purpose, or at least the overwhelming  
13 majority. There is no evidence of that. Ladies and gentlemen,  
14 this whole case is based upon exaggerations and statistics  
15 instead of facts.

16 Now, the two medical doctors who testified before you  
17 talked about different types of practice. And again you are  
18 going to be instructed that this is not a medical malpractice  
19 case. There are different types of practice of acting as a  
20 doctor. There is best possible practice. There is an average  
21 practice. There is negligent practice. There is sloppy  
22 practice. There is malpractice. But it's all acting as a  
23 doctor. In this case that standard they just showed you has to  
24 be outside of acting as a doctor, outside of the usual course.

25 THE COURT: Do you want to take that down, please.

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Summation - Mr. Mazurek

1 MR. MAZUREK: Outside of the usual course of medical  
2 practice and not for a legitimate medical judgment.

3 Now on Counts Two and Three what is the evidence that  
4 Dr. Moshe acted outside the usual course for this list of  
5 patients that are shown on these two days on Count Two of  
6 January 10, 2013? What evidence have you heard about the  
7 patient visits for all of these patients and what Dr. Moshe did  
8 in terms of the diagnosis, examination and treatment? You  
9 haven't heard anything except from the 12th person listed on  
10 this column, Abraham Correa, on January 10, 2013, and he  
11 testified that he lied to the doctor even at this point in his  
12 treatment with the doctor. That's not proof beyond a  
13 reasonable doubt.

14 Count Three, all of these patients that are listed in  
15 this chart, Government Exhibit 111, what have you heard about  
16 them? You haven't heard that they saw the doctor or what  
17 problems they had, or whether the doctor made verified checks  
18 on MRI referrals, or whether he checked their PMP or their  
19 urine drug test. You haven't heard anything other than some  
20 random documents that may have been talked about as an aside  
21 nor in some of the testimony of Dr. Gharibo. But that's not  
22 proof beyond a reasonable doubt. You haven't hear that from  
23 any of these witnesses, any of these patients, of what Dr.  
24 Moshe actually did in the examination room.

25 Now, the judge is going to also talk to you about the

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Summation - Mr. Mazurek

1 government's burden of proof beyond a reasonable doubt, and I  
2 expect that she is going to describe that in some detail. A  
3 reasonable doubt is a fair doubt based on reason, logic, common  
4 sense or experience. It is a doubt that an ordinary reasonable  
5 person has after carefully weighing --

6 THE COURT: Do me a favor and don't charge reasonable  
7 doubt to my jury, please.

8 MR. MAZUREK: She is going to talk to you about in  
9 some detail --

10 THE COURT: She will talk to you about reasonable  
11 doubt. But I have very little to do at this trial, but I'm  
12 kind of jealous.

13 MR. MAZUREK: I won't take that away from you, Judge.

14 THE COURT: Thank you so much.

15 MR. MAZUREK: Ladies and gentlemen, when you think  
16 about the evidence in this case, when you think about it, think  
17 about the facts that have been presented before you about what  
18 Dr. Moshe actually did, what the testimony said he did, what  
19 evidence the government is relying on to meet that burden.

20 MS. CUCINELLA: Objection.

21 THE COURT: The objection is overruled.

22 MS. CUCINELLA: To the photograph?

23 THE COURT: There is absolutely nothing wrong with it.  
24 They have been looking at him for the last two weeks; I think  
25 they know what he looks like.

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Summation - Mr. Mazurek

1 MR. MAZUREK: And, ladies and gentlemen, I think when  
2 you review the evidence and what the government has produced  
3 about the things that their own witnesses said that Dr. Moshe  
4 did, what he didn't do, what's in his own voice and recordings,  
5 how he checked the PMP searches, how he asked Damon Leonard to  
6 call the DEA, how he discharged patients like Antonio Pedraza  
7 who was doctor shopping, how he verified prescriptions with  
8 pharmacists, how he wanted a police presence at his own office  
9 after the robberies at his office -- what drug dealer would  
10 want the police at his own office?

11 Dr. Warfield testified that she found the review of  
12 the 24 files out of the 3,000 were within the usual course of  
13 medical practice. How the doctor retained AFTS through the  
14 help of Chris Dillon to secure the lab reports that were coming  
15 to him directly, so that it could be uploaded to Practice  
16 Fusion. The government makes a big deal about the fact that  
17 these few documents that were found in his apartment --  
18 remember the Aegis report labs, they said they showed blank  
19 places or tape over the patient name or the date of birth.  
20 Think about how those were found and what the evidence is in  
21 this case.

22 The government wants you to believe that suddenly Dr.  
23 Moshe was uploading things to Practice Fusion from these few  
24 documents that were found, according to Agent Muller in his  
25 testimony, among the boxes and boxes of records that were found

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Summation - Mr. Mazurek

1 in his home. That doesn't make sense.

2 We know Practice Fusion, the government presented  
3 evidence of an activity log that was provided by the Practice  
4 Fusion people to show what actions were being done on Practice  
5 Fusion. It doesn't make any sense. The doctor wasn't  
6 uploading documents. Look at those activity logs. He didn't  
7 know about those activity logs. They were provided by Practice  
8 Fusion after the fact and provided an audit trail that the  
9 government talked about. It was Damon Leonard and Jomarís  
10 Javier that were uploading those documents. The government  
11 wants to you speculate that all of a sudden the doctor was  
12 doing some grand scheme from his apartment on these few  
13 documents.

14 You saw the computer in his room and the scanner.  
15 Where is the evidence that any of the documents were uploaded  
16 from that computer and scanner? There is none. Isn't it  
17 really what happened -- and you know what happened in this  
18 case -- is that Dr. Moshe would take medical records, stacks  
19 and boxes and boxes, as Muller testified, and would bring them  
20 home? There is no evidence that he even saw these few  
21 documents out of the tens of thousands of pages.

22 What is more likely -- and you can reasonably infer  
23 from the testimony of Damon Leonard -- is that in the summer of  
24 2014, when he is by himself in the office, and he is trying to  
25 make good for the drug group guy that he is helping, that he



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Summation - Mr. Mazurek

1 was overwhelmed, and he left these documents in the office, and  
2 one day the doctor scooped them up and brought them home.  
3 There is no evidence that anyone was overriding reports except  
4 the testimony that Leonard and Correa and the other office  
5 staff was doing it. That's all the evidence proves.

6 The doctor in fact was taking steps by retaining  
7 places like AFTS so that no more overrides could happen. He  
8 submitted thousands of Medicaid and HMO claims. He followed up  
9 with his patients regarding physical therapy and surgeries, as  
10 a doctor should. He discharged patients after he verified fake  
11 MRI reports. He conducted his own needle test, EMG and NCB  
12 tests, in-house. And he provided physical therapy there, and  
13 he fired his staff when he discovered problems. This is all  
14 reasonable doubt.

15 And when you go back to the jury room and begin to  
16 deliberate, and think of whether you can trust Damon Leonard  
17 Abraham Correa to convict a man, think about it as you are  
18 walking across a foot bridge. Would you take that next step on  
19 that next plank over a chasm below if it was based on what  
20 Damon Leonard or Abraham Correa said? That's the evidence the  
21 government wants to use to convict Dr. Moshe, and it's  
22 insufficient; it's not proof beyond a reasonable doubt.

23 Now, my time is coming to an end, and this is always  
24 the hardest part of the case for me, because I can no longer be  
25 the voice of my client. I turn that over to you, each and

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Rebuttal - Mr. Diskant

1 every one of you as the judges of the facts. In a moment Mr.  
2 Diskant is going to have an opportunity to stand up and rebut  
3 the things I said, and I won't have another chance to come  
4 back. Some of you might not be upset with that. But you will  
5 know in your heart, and you will know it from the many times  
6 that I have probably spoken too long, that what may answers  
7 would be to Mr. Diskant. Because I believe that as you've  
8 heard in cross-examination, and our own witnesses, we have  
9 presented to you what really happened in this case, and the  
10 government has not met that burden.

11 So remember my words as Mr. Diskant speaks, because I  
12 think you will know my rebuttal to him from the evidence that  
13 you heard in this case.

14 Dr. Moshe was a medical doctor, and when he rehired  
15 Jomaris Javier he showed you he was a compassionate man. He  
16 had \$1.7 million in his house that amounted to his life  
17 savings. He may not have been the best doctor in the world,  
18 and he doesn't have to be. The question is whether he is a  
19 drug dealer.

20 I submit to you, ladies and gentlemen, that the  
21 government has not even come close to show that when he turned  
22 65 and he moved to West 162nd Street he decided to become a  
23 drug dealer. It didn't happen, it never would happen, and he  
24 is not guilty of all counts in this indictment. Thank you.

25 THE COURT: OK. Why don't you take a 15 minute break.

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Rebuttal - Mr. Diskant

1 Yes, yes says Juror 4. By the way, do you all know that you  
2 look like a Paas Easter egg coloring kit? It's really quite  
3 extraordinary.

4 And don't discuss the case. This, by the way, is the  
5 second to last time I'm going to tell you don't discuss the  
6 case; keep an open mind.

7 (Jury not present)

8 THE COURT: 15 minutes will be sufficient?

9 MR. DISKANT: Yes, your Honor. Thank you. I  
10 appreciate it.

11 (Recess)

12 (Jury not present)

13 THE COURT: Are we ready for the jury?

14 MR. DISKANT: Yes, your Honor.

15 (Jury present)

16 THE COURT: OK. Is the government ready for its  
17 rebuttal summation?

18 MR. DISKANT: Yes, your Honor. Thank you.

19 Ladies and gentlemen, Mr. Mazurek just spent the  
20 better part of the last hour and a half trying to talk you out  
21 of your common sense. Has anyone ever walked into a doctor's  
22 office and handed a wad of 20s to a doctor in a patient room?  
23 Anyone? Anyone used an MRI report or a lab report that they  
24 had to cut and paste their name onto in order to get seen?  
25 Anyone? Anyone ever been in a doctor's office that looked

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Rebuttal - Mr. Diskant

1 anything like the defendant's doctor's office? Your common  
2 sense tells you that something here was wrong. Your common  
3 sense tells you that a doctor actually engaged in the  
4 legitimate practice of medicine wants to hire nurses or at  
5 least people who have some relevant training in the field, not  
6 Damon Leonard. And your common sense tells you that a doctor  
7 who thinks he is doing everything right, that a doctor who  
8 thinks that his income is lawfully and legitimately earned, is  
9 going to accurately report that income to the IRS and not save  
10 it in Ziploc bags in his home.

11 Now, we are going to talk through the evidence in this  
12 case and at least some of the arguments that Mr. Mazurek just  
13 made to you. And let me reemphasize that the defendant has no  
14 burden; the burden rests on the government; and we embrace it;  
15 and we believe, as I will set forth, that we have met it.

16 But if the defendant chooses to make arguments to  
17 you -- as Mr. Mazurek clearly has in his case -- then you have  
18 an obligation to look at those in the same way you look at the  
19 government's evidence, and ask yourselves whether they make  
20 sense, whether they're proven by evidence in the case, or at  
21 least consistent with evidence in the case. And I would submit  
22 to you that much of what defense counsel just said is not quite  
23 right. Let's talk about a few of those.

24 First and foremost, let's be very clear on what the  
25 issues in dispute in this case are, what it is you need to

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Rebuttal - Mr. Diskant

1 find.

2 As you know, Judge McMahon is going instruct you on  
3 the law, and with respect to Count One, the conspiracy to  
4 distribute narcotics, I expect she will tell you that you need  
5 to find that the defendant agreed with at least one other  
6 person -- one -- to unlawfully distribute narcotics. You don't  
7 need to find that every single patient was illegitimate; you do  
8 not need to find that the defendant had an agreement with each  
9 and every person you have heard about in this trial. Just one.

10 Similarly, with respect to Counts Two and Counts  
11 Three, which focused on specific dates in question, I expect  
12 Judge McMahon will tell you that you need to agree that at  
13 least one of the prescriptions written on those dates was  
14 illegitimate, was not for a legitimate medical purpose and not  
15 written in good faith, just one.

16 Because, as the government has told you all along,  
17 there were a number of insurance patients, and those insurance  
18 patients were not really what this case is about. And, yes,  
19 the defendant put two of those on the stand, Ms. Medina and  
20 Ms. Torres. And as Ms. Cucinella explained to you earlier this  
21 morning, much of what they told you is actually entirely  
22 consistent with the other evidence in this case.

23 Remember, Ms. Torres is the insurance patient who told  
24 you she got sick of the crowds and being told she had to wait  
25 until all of the cash patients went before her. Entirely

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Rebuttal - Mr. Diskant

1 consistent with what Damon Leonard told you.

2 But take a look at Government Exhibit 113, because  
3 Mr. Mazurek suggested the government is trying to wow you with  
4 numbers. Take a look at what it actually says. Over the  
5 period of the conspiracy 2012 to 2014 the defendant wrote more  
6 than 14,600 oxycodone prescriptions. Only 4300 patient visits  
7 were billed to an insurance company. That means that more than  
8 10,000 of those prescriptions were paid for in cash. The  
9 government is going to ask you to focus on those when you go  
10 back to the jury room, those 10,000 prescriptions, more than  
11 two thirds of them were paid for in cash.

12 And, by the way, look at the next two columns of this  
13 chart. Mr. Mazurek talked to you about the hundreds of  
14 thousands of dollars the defendant billed to insurance  
15 companies. Yeah, he got about \$357,000 for those insurance  
16 patients. He got over \$2 million from the cash patients. No  
17 surprise that he instructed Damon Leonard and Abraham Correa  
18 and his office workers that he wanted them to bring in the cash  
19 patients.

20 By the way, look at Government Exhibit 117. This is a  
21 chart comparing the BNE data for the prescriptions written with  
22 those insurance patients. Look first at the left-hand side of  
23 the chart, that's the early part of 2012, back before the  
24 defendant opens his own practice. And look how the number of  
25 prescriptions is roughly equal to the number of insurance

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Rebuttal - Mr. Diskant

1 patients, almost one for one. Look what happens once that  
2 clinic opens on 162nd Street, the clinic that has been the  
3 focus of the government's evidence in this case. The numbers  
4 are nowhere near each other.

5 Folks, this is not the government blinding you with  
6 numbers; this is the government providing you evidence of  
7 exactly what the defendant was doing.

8 Now, Mr. Mazurek talked to you about the phone  
9 records, Government Exhibit 115, and he told you that the  
10 government hadn't established who these people were or why  
11 these calls mattered. And you know that nothing could be  
12 further from the truth, because you were paying attention to  
13 the evidence in this case. The top name on the left-hand side,  
14 Raymond Williams, is familiar to you as Obama, the crew chief  
15 who introduced Abraham Correa to the game, the crew chief who  
16 came in to see the doctor privately when he had a problem  
17 getting his prescriptions filled. He is calling him 20 times  
18 at home.

19 You heard about Curtis Sanders. Abraham Correa  
20 identified him as another one of the bosses at the clinic.

21 And going over to the top right-hand side you heard  
22 about Tasheen Davis, and you know why this call matters,  
23 because you heard Tasheen Davis places this call on October 18  
24 at 7:15 p.m., after she had been stopped in New Jersey and her  
25 prescription confiscated, and you have seen what the doctor

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Rebuttal - Mr. Diskant

1 does immediately after this call.

2 Remember Government Exhibit 218? That's Ms. Davis'  
3 SOAP note, the Practice Fusion file for her. Take a look at  
4 page 11. Zoom in on that top. Look when this SOAP note is  
5 signed. This is for a patient visit in February. The  
6 defendant signs it October 18 at 8:09 p.m., just after the call  
7 from Tasheen Davis, more than eight months after the visit, and  
8 just before he sends this very record back to the police in New  
9 Jersey.

10 Folks, this is the conspiracy in action, a patient who  
11 has been caught red handed with a prescription a pharmacist  
12 deemed suspicious, calling the doctor at home and saying, doc,  
13 I've been caught with a prescription, I need you to back me up.

14 What does the defendant do? He doesn't have any  
15 actual patient files to support what he has been doing, so he  
16 goes into his computer and he creates them. And not just this  
17 one. Look at page 22, the next month patient visit created  
18 October 18 at 8:37 p.m. Look at page 27, the next patient  
19 visit, this one in May. When is it created? October 18 at  
20 8:45 p.m. Look at page 30, June 7, 2013, at 8:53 p.m. Look at  
21 page 34, July 11, at 9:02 p.m -- I'm sorry the July 11 visit,  
22 October 18 at 9:02 p.m. And look at page 42 -- excuse me,  
23 41 -- either way. You have now seen five of them. I submit  
24 that in there is one more of those in which he does the exact  
25 same thing. He goes through that night after he gets the call



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Rebuttal - Mr. Diskant

1 from Tasheen Davis, and he creates each and every one of those  
2 patient files, and he then sends them to the police in New  
3 Jersey -- detective Beers told you about that -- to confirm  
4 that she was a patient.

5 Folks, this is clear evidence that the defendant knew  
6 exactly what he was doing, and that he was working with these  
7 other people, bosses like Tasheen Davis, to get these drugs  
8 distributed.

9 Now, I want to talk a bit about the government's  
10 cooperators Abraham Correa and Damon Leonard, because  
11 Mr. Mazurek spent a lot of time calling them names. He called  
12 them liars. He called them drug dealers. He called them  
13 career criminals. Let's be very clear, the reason you heard  
14 from these two men is because the defendant chose them as his  
15 employees. Let me say that again. The only reason those two  
16 people testified before you is because they were picked by the  
17 defendant to work for him. Yes, they were drug dealers. They  
18 were drug dealers at the time the defendant hired them. In  
19 fact that's why he hired them.

20 Remember the testimony on this? You know, for all of  
21 the lies that Mr. Mazurek accuses them of, most of what they  
22 told you is not actually in dispute. Both Mr. Correa and  
23 Mr. Leonard told you that they were hired by the defendant  
24 because the defendant knew them; they were already hanging out  
25 in the clinic on a daily basis. Mr. Correa told you he was

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Rebuttal - Mr. Diskant

1 there three to four times a week getting his patients in.

2 Mr. Leonard told you he was there even more  
3 frequently, that the doctor recognized him as someone who was  
4 in the office every single day.

5 The defendant knew exactly who they were, and he knew  
6 what they were doing, and that is why he hired them. Because  
7 if he wanted to keep this scheme going, he couldn't hire anyone  
8 legitimate, anyone who would look at these medical records and  
9 know immediately that this place was bogus, who might report  
10 him to the DEA.

11 Ladies and gentlemen, these people testified before  
12 you exclusively because they were chosen by the defendant to  
13 assume the jobs that he gave them.

14 Now, again Mr. Mazurek calls them liars, and I would  
15 push you to question what exactly they were lying about. Yes,  
16 there was a lot of cross-examination about very specific  
17 minutia of their testimony.

18 Damon Leonard was pushed on whether or not a woman he  
19 called his mother was the woman who give birth to him or a  
20 woman named Rosyln Hill that he refers to as his mother.

21 Abraham Correa was pushed on whether or not he  
22 accepted money from one person as opposed to another, or to do  
23 one thing and not another. And I submit to you that none of  
24 those issues are going to be relevant to the verdict you are  
25 asked to return.

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Rebuttal - Mr. Diskant

1           Mr. Mazurek pointed you to a jury instruction which  
2 permits you to throw out the witness's entire testimony, but he  
3 left out the second half of the instruction. Take a look at it  
4 for yourself. The second half of the instruction  
5 specifically --

6           THE COURT: Could you take the instruction down?  
7 Don't charge the jury.

8           MR. DISKANT: Thank you, your Honor.

9           Listen to the judge's instruction on this.

10          THE COURT: That's a good thing to tell them.

11          MR. DISKANT: Very good thing.

12          I expect you will learn that there is a little bit  
13 more to this story than defense counsel was letting you know,  
14 and I expect Judge McMahon will tell you that you do not have  
15 to throw the baby out with the bath water; you do not have to  
16 throw out the entire testimony simply because of a minor and  
17 completely irrelevant inconsistency.

18          So, again focus on the parts of their testimony that  
19 really aren't seriously disputed. Abraham Correa tells you  
20 that he is hired by the defendant after seeing the defendant as  
21 a patient for several months. Now, there is some dispute about  
22 whether Mr. Correa said that he had neck pain or he had back  
23 pain, but here is what you know for sure: When Abraham Correa  
24 is hired by the defendant, he is not wearing that cervical  
25 collar the defendant prescribed for him. In fact, that never

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1 shows up at all.

2 You saw some of the pictures of Mr. Correa outside the  
3 office, for example, Government Exhibit 4-B. Where is the  
4 cervical collar? This is him hanging outside the doctor's  
5 office working for him. It's not there, because the defendant  
6 knew he didn't need it.

7 There is another even more important way for you to  
8 know that the defendant knew all along that Mr. Correa wasn't a  
9 legitimate patient. Remember the patient file that he  
10 completes for Mr. Correa? He diagnoses Mr. Correa as opiate  
11 dependent. We will bring that document up for you in just a  
12 minute.

13 And Dr. Warfield, the defendant's own expert, told you  
14 what opioid dependence means. It means the body comes to rely  
15 on the drug; it means the body is going to be in real trouble  
16 if you take that drug away. What does the defendant do? He  
17 cuts Abraham Correa off cold turkey on January 10, 2013,  
18 because at this point he has already hired Mr. Correa to work  
19 for him, and even for this defendant it is just too ridiculous  
20 to be prescribing oxycodone to your own bouncer.

21 He cuts him off cold turkey. He doesn't wean him off,  
22 he doesn't refer him to another doctor. Why? Because the  
23 defendant knows Abraham Correa has never taken this his pills.  
24 He knows exactly who Abraham Correa is, and he knows why he has  
25 been writing these prescriptions: These are drug deals. It is

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Rebuttal - Mr. Diskant

1 not legitimate medicine.

2 Now another argument Mr. Mazurek advanced to you is  
3 that the office staff was somehow fooling the doctor. And  
4 there are any number of problems with this argument, but  
5 perhaps the easiest is you know what the paperwork looked like  
6 by the time it got back to the defendant's home.

7 This is the paperwork in the format that he looked at  
8 it in, and the fake nature of it is completely obvious. You  
9 have seen these exhibits before, Government's Exhibits 543 and  
10 544. Just pause there. Has anyone seen a handwritten MRI  
11 report? I mean this is just facially ridiculous. Defendant  
12 writes a prescription anyway.

13 550, same thing, different patient. Exact same MRI.

14 Ladies and gentlemen, you don't need an expert to know  
15 that these are fake, and you don't need to be a detective  
16 either, because it doesn't exactly take a CSI lab to figure out  
17 that these documents are fake.

18 Government Exhibit 547, 545, 546, 549, and most of all  
19 Government's Exhibits 559 and 559A and 560. You saw this for  
20 yourself. This document has White-out on it. It's one of  
21 many. The defendant had these in his home.

22 So, ask yourself when you evaluate Mr. Mazurek's  
23 argument that the doctor was being fooled by his office staff,  
24 who is fooling the doctor on this one? I submit to you no one  
25 was. The doctor knew exactly what he was doing, and he had

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Rebuttal - Mr. Diskant

1 these in his home so that he too could create the fake reports  
2 that he needed to keep in his file, so that if any day a jury  
3 like you were to start combing through his files he could point  
4 to his reports and say, yeah, I've got something in here.

5 That's not legitimate medicine, and it's certainly not  
6 good faith. Because any doctor who has a good faith belief  
7 that they are engaging in the legitimate practice of medicine  
8 is not going to accept a lab report that has a name cut and  
9 pasted on it. Any doctor who is operating in a good faith  
10 belief that they are engaged in a legitimate practice of  
11 medicine is not going to accept any of these documents at all,  
12 because they are completely and obviously fiction.

13 Now, Mr. Mazurek talked to you a bit about the  
14 recording, and again I would caution you be careful about what  
15 the actual evidence in this case is, because I would submit to  
16 you that while Mr. Mazurek focused your attention on parts of  
17 the recordings, he carefully avoided some other parts.

18 Remember that first visit for Jose Lantigua, he goes  
19 in to see the defendant? Do you remember how that visit  
20 starts? It starts with the most important part: He has to  
21 pay. Jose Lantigua hands him \$200 in cash, and this is where  
22 again, folks, your common sense tells you off the bat something  
23 is very wrong here, because legitimate doctors engaged in the  
24 legitimate practice of medicine are not collecting cash from  
25 patient after patient in the waiting room.

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Rebuttal - Mr. Diskant

1           Look what happens next. Jose Lantigua tells him he is  
2 on M30s. And you heard a little bit of testimony about what  
3 M30 is. Abraham Correa told you it's a street term for  
4 oxycodone. He is referring to it by its street name. The  
5 defendant doesn't react to that at all. In fact, leaving aside  
6 the fact that the defendant is not at all phased by the use of  
7 the term M30, he doesn't follow up with even obvious questions  
8 a legitimate doctor would. Where did you get M30s from? What  
9 doctor prescribed them to you? What dosages are you taking?  
10 How long have you been taking them for? All these were  
11 questions that Dr. Warfield -- the defendant's expert -- told  
12 you would be important questions. Do you remember her telling  
13 you you want to know what works, what doesn't work, what has  
14 been tried. There is absolutely no way the defendant can know  
15 that from this exam, because he doesn't follow up and ask any  
16 basic questions.

17           The defendant then does a physical examination. Take  
18 a look at that. Sure he says stand up, walk over, turn around.  
19 But there is something missing. The defendant is not asking  
20 him if any of this is causing any pain. He is not asking him  
21 if it hurts. This isn't an examination; this is going through  
22 the motions. That's what Mr. Correa told you. And the  
23 recording speaks for itself.

24           Finally we get to the end of this recording where a  
25 patient who says he lives in New York and was seeing a doctor

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Rebuttal - Mr. Diskant

1 in New York is sent to a random pharmacy in Queens. Folks,  
2 your common sense tells you this makes absolutely no sense at  
3 all, no sense unless you understand what is going on here.

4 And Abraham Correa told you all about this, about the  
5 pharmacies that the doctor liked to work with, the pharmacies  
6 that would fill the defendant's prescription, that would take  
7 them. He is steering this particular patient away from, say,  
8 the Rite Aid down the street to this particular pharmacy.

9 And, yes, Mr. Mazurek showed you some of the BNE data,  
10 and, yes, some of the pharmacies all over the city filled these  
11 prescriptions. But the point here -- and it's the same point  
12 in the government exhibit he showed you -- is that the majority  
13 of these prescriptions were going to a handful of pharmacies  
14 that the defendant had relationships with, pharmacies that were  
15 willing to fill these prescriptions, pharmacies that were  
16 willing to fill them in return for cash, which is what this  
17 patient was paying.

18 I submit to you, ladies and gentlemen, this patient  
19 visit, like the other two that follow it, is not legitimate at  
20 all. In fact, it's exactly like the fake MRI reports that you  
21 have been looking at in this case. If you take a quick look  
22 at, it sort of looks like a medical visit, just like those sort  
23 of look like medical documents. But if you actually drill down  
24 on what is going on, if you actually focus on the details, this  
25 is just as fake as the paperwork.



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Rebuttal - Mr. Diskant

1           Look at the second visit; look at how it begins. Mr.  
2       Correa starts asking questions without the doctor even asking  
3       them. He's not translating anything.

4           Go to the next slide: After you take all the  
5       medication, where do you feel? I don't feel it the CS says,  
6       zero.

7           There is no question posed by Dr. Mirilishvili.  
8       Correa just starts going through the motions. Remember Mr.  
9       Correa testifying about this? He would ask the question  
10      without waiting for the doctor to do so, because it was a  
11      script. He knew what the next question was. The doctor  
12      doesn't stop him, by the way. The doctor knows what is  
13      happening too.

14          Go to the third visit. Opens the same way: When I  
15      saw you the last time you were complaining of your lower back  
16      pain.

17          Except it's not true. The last time the CS was there,  
18      the last time Jose was in the doctor's office, he says he has  
19      zero pain. He is not complaining of lower back pain.

20          (Continued on next page)

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Rebuttal - Mr. Diskant

1 MR. DISKANT: The doctor doesn't care. None of these  
2 answers matter and none of them are being written down because  
3 you have seen Jose Lantigua's patient chart, Government Exhibit  
4 210. There is nothing here, folks, not a single thing. No  
5 diagnosis at all. All of the things Dr. Warfield, the  
6 defendant's expert, told you had to exist in order to have a  
7 legitimate doctor/patient relationship, none of them are here.  
8 Because none of them matter. This is a game in which the two  
9 most important moves are the patient paying the \$200 in cash  
10 when he steps into the office and the patient getting the  
11 prescription the defendant writes at the end and that's what  
12 Jose Lantigua got every single time he saw the defendant.

13 By the way, Mr. Mazurek told you about questions that  
14 the defendant asked about referrals and about physical therapy  
15 and about surgery and you saw, if you look at the recordings,  
16 that none of those things ever happened. The questions get  
17 asked as part of the game, as part of the motions. The answers  
18 are always the same. Yeah, I am going to do it in the future.  
19 The prescriptions get written. This is going through the  
20 motions. It is fake. It is not legitimate medicine at all.

21 By the way, Mr. Mazurek also pointed out that some of  
22 the defendant's patients would get prescriptions for  
23 noncontrolled substances. People like Jose Lantigua wouldn't  
24 just get a prescription for oxycodone. He would get three more  
25 things. You know why that happened, too. Abraham Correa told

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Rebuttal - Mr. Diskant

1 you that. Remember this testimony? It was the only way those  
2 pharmacies the defendant worked with would fill the  
3 prescription, because the pharmacies wouldn't fill just a  
4 prescription for oxycodone. That was far too much of a red  
5 flag. They required the defendant to write prescriptions for  
6 other things. That's how they get filled. By the way, you  
7 heard the same thing from Mr. Gharibo who told you that the  
8 prescriptions the defendant was writing, in addition to  
9 oxycodone, didn't make any sense. They didn't seem to be  
10 medically appropriate. Abraham Correa told you the same thing,  
11 by the way. You remember that. He told you that he was  
12 familiar with all of the other prescriptions being written for  
13 Jose Lantigua because he had gotten all of those prescriptions  
14 himself, the exact same cocktail, the exact same set of four  
15 drugs. Folks, this is just another way for the doctor to cover  
16 his tracks. It is not evidence of a legitimate medical  
17 practice.

18 Mr. Mazurek focused your attention on the second date,  
19 the second specific date identified in the conspiracy, October  
20 28, 2014. That's the subject of Count Three and he told you  
21 that there is absolutely no evidence of what the defendant was  
22 doing at that time period, no evidence that any of the  
23 prescriptions written on that date were medically unnecessary.

24 You know that's not true for a couple of reasons.  
25 First, you know what happened just a week before October 28.

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Rebuttal - Mr. Diskant

1 You know that the defendant was interviewed by members of the  
2 DEA about his practice. Special Agent Muller, the first  
3 witness of the case, told you about that. Remember what  
4 happens in that interview. This is very important. The  
5 defendant lies through his teeth about the most criminal  
6 aspects of his practice. He tells Special Agent Muller and the  
7 DEA that he sees just 10 to 20 patients a day, that he's  
8 collecting just a thousand dollars in cash. He has full  
9 participation in hydrotherapy and in physical therapy. This is  
10 a week before, early October 2014. And you know that every  
11 single one of those statements is false. This is the defendant  
12 trying to cover his tracks because you know what happens on  
13 October 28, 2014.

14 Government Exhibit 111. The defendant writes 33  
15 identical prescriptions for oxycodone, not 10 to 20 patients;  
16 33. Each and every one of them pays him in cash. And at this  
17 point it is up to \$300 a patient. He is not collecting a  
18 thousand dollars in cash a day. He's collecting more than  
19 \$10,000 in cash a day and he is lying about that because he  
20 knows that the number of patients he is seeing, the number of  
21 prescriptions he is writing and the amount of cash that he is  
22 collecting are devastating evidence of his guilt.

23 They did hear about at least one of the specific  
24 patients seen on this day, gentleman by the name of Larry  
25 Ashby. Government Exhibit 202. You took a look at some of

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Rebuttal - Mr. Diskant

1 Mr. Ashby's paperwork. Page 7 is his referral, for example.  
2 Once again, folks, this document is just ridiculous on its  
3 face. Leaving aside the fact that Larry Ashby's name is in a  
4 different font and it's crooked, just read it to yourself. I  
5 am referring Larry Ashby for treatment for her chronic back  
6 pain. I am asking you to specifically address her pain. But  
7 what was an explanation of Ms. Prunty's evaluation? Is there  
8 anyone here who would accept this document sight unseen and  
9 deem it legitimate? Give me a break.

10 Keep in mind that Judge McMahon is going to instruct  
11 you that one way of you finding the defendant's knowledge is  
12 what's known as conscious avoidance or willful blindness  
13 because, as I expect she will tell you, a defendant cannot  
14 willfully and intentionally remain ignorant of a fact important  
15 to one's conduct in order to escape the consequences of  
16 criminal law.

17 Folks, when the defendant accepted this document and  
18 continued to write prescriptions for this patient month after  
19 month after month, including on October 28, 2014, he was at the  
20 very best intentionally choosing to remain ignorant of facts  
21 that would be obvious to any one of us. This document is fake  
22 and this patient is not legitimate.

23 The final subject I want to talk to you about is that  
24 subject of knowledge because it really is the most important in  
25 this case. How is it that you know? As the defendant was

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Rebuttal - Mr. Diskant

1 doing the things that you have heard about during this case.  
2 How is it you know that the defendant knew at the time that  
3 what he was doing was criminal, that what he was doing was  
4 outside the course of medical practice?

5 I want to highlight four of them briefly. The first  
6 is one of these pie charts that Mr. Mazurek talked to you  
7 about. Take a look at Government Exhibit 101. Government  
8 Exhibit 101 is what the defendant was doing in 2010. He's  
9 right, you have not heard a ton of evidence about what the  
10 doctor was doing at that time. But you know that at the time  
11 he had a license, and you know that at the time he was writing  
12 a variety of different kinds of medications. Mr. Mazurek  
13 focused you on the Lyrica, but look at the oxycodone. He  
14 writes oxycodone, five kilograms; he writes oxycodone, 7.5  
15 milligrams; he writes oxycodone, 10 milligrams; he writes  
16 oxycodone, 15 milligrams. He is writing a whole variety of  
17 different types.

18 Why? Because the defendant knows what Dr. Warfield,  
19 his own expert, told you, which is that legitimate pain doctors  
20 are going to treat pain individually. Different people are  
21 going to respond to pain individually. This is not just about  
22 volume, although we are going to talk about that in a minute.  
23 It's about variety. The defendant knows what legitimate pain  
24 medication looks like because he was doing it in 2010.

25 Now compare that to Government Exhibit 104. This is

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Rebuttal - Mr. Diskant

1 2012 to 2014. Again, folks, it's not just about the volume,  
2 although the volume is important. The defendant has gone from  
3 writing 600, 700 prescriptions a year to writing nearly 14,000  
4 in just over two years. It's virtually all of them are for the  
5 exact same thing, 90 30-milligram oxycodone tablets, the things  
6 that the defendant knew his patients would pay for.

7 When you go back to the jury room and you ask  
8 yourself, how do I know, how has the government proven to me  
9 that the defendant knew he was engaging outside of the ordinary  
10 course of legitimate medicine? Remember these charts because  
11 what these charts make clear is that the defendant knows what  
12 legitimate medicine looks like. He was engaged in 2010. What  
13 he was doing at the clinic was not the legitimate practice of  
14 medicine.

15 The second way that you know that the defendant knew  
16 all along that what he was doing was criminal is you know a bit  
17 about why the defendant's prescribing habits changed and  
18 changed so drastically over time because you have taken a look  
19 at how much money the defendant was earning back in 2010, when  
20 he was writing that variety of prescriptions.

21 Take a look at Government Exhibit 801, defendant's tax  
22 return for 2010, the year when he wrote just 600 controlled  
23 substance prescriptions. He made \$45,292, which is a perfectly  
24 respectable income for a law-abiding doctor. You know that  
25 changed and changed very, very quickly during the period of the

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Rebuttal - Mr. Diskant

1 charged conspiracy, when he was making almost 10 times that  
2 much or more. That's only according to his tax returns.

3 Look at what happens in 2011, Government Exhibit 802.  
4 He reports a loss. This is the year before the clinic opens.  
5 He is not making any money at all. Now look at the period in  
6 the charged conspiracy. \$200 per prescription for those 10,000  
7 or more prescriptions for which patients paid cash. It's over  
8 \$2 million in cash alone. How do you know that the defendant  
9 knew all along that what he was doing was illegal? How do you  
10 explain why it is that the defendant's prescribing habits  
11 changed so quickly? It's the only story there is, money,  
12 greed.

13 Third, you have seen the documents for yourself. I am  
14 not going to belabor them any further. There is stacks of  
15 them, visibly thick documents, documents in the defendant's  
16 home, documents the defendant was putting in his files and  
17 handling himself, and documents that make absolutely 100  
18 percent clear that the defendant knew his patients were  
19 illegitimate, at least some of them, and he was writing them  
20 prescriptions anyway.

21 Fourth, you saw the cash, Government Exhibits 5E and  
22 5J, more than \$1.75 million in cash found in the defendant's  
23 home in Ziploc bags. Folks, this looks like drug money because  
24 it is drug money. That's precisely what it is. Mr. Mazurek  
25 told you this represented the defendant's life savings. I



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Rebuttal - Mr. Diskant

1 would ask you, where is the evidence of that? You've already  
2 heard that the defendant owned multiple homes. You've heard  
3 the defendant was driving a Mercedes. Where is the evidence  
4 that this constituted his life savings?

5 MR. MAZUREK: Objection. Burden shifting.

6 THE COURT: Ladies and gentlemen, I think you know,  
7 and the government has said repeatedly, that the defendant has  
8 no burden to prove anything in this case.

9 MR. DISKANT: By the way, Mr. Mazurek talked to you  
10 about the defendant's bank accounts, told you the defendant  
11 only kept \$5,000 in the bank. Go to Government Exhibit 112.  
12 The story is a little bit more complicated than that. Over the  
13 period of the charged conspiracy the defendant moved more than  
14 \$1.25 million in and out of his bank accounts. This was not a  
15 person who was afraid of the banking system. He did it every  
16 time he needed to cut a check. He did it for all of his  
17 expenses. He had bank accounts and he knew how to use them.  
18 And he also knew how to keep drug money out of the banking  
19 system.

20 That's what the evidence in this case shows. When I  
21 stood before you a few weeks ago on behalf of the government we  
22 asked you to do three things: To pay careful attention to the  
23 evidence, which I know you have done; to follow Judge McMahon's  
24 instructions on the law, which I know you will do; and, third,  
25 and most important, to use your common sense, the same common

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1 sense that you use to make decisions in your everyday lives.

2 If you do that, I submit to you this is not a hard  
3 case because your common sense has been telling you all along  
4 that there was nothing legitimate about the vast majority of  
5 things going on in the defendant's clinic. Your common sense  
6 tells you that the defendant agreed with at least one other  
7 person. Take your pick, Abraham Correa, Damon Leonard, Tasheen  
8 Davis, and that phone call, Joseph Gray, Raymond Williams and  
9 all those calls to his home. Your common sense tells you that  
10 the defendant agreed with at least one person to write  
11 medically unnecessary oxycodone prescriptions. Your common  
12 sense tells you that on January 10, the subject of Count Two,  
13 the defendant wrote a prescription for Abraham Correa, after he  
14 had already hired Correa to work for him, knowing full well  
15 that Correa had no actual need for oxycodone. Your common  
16 sense tells you that the defendant, while writing 33 oxycodone  
17 prescriptions on December 28, all in return for cash, including  
18 one for Larry Ashby with his fake MRI, he knew all along what  
19 he what is doing. That's what makes him guilty and that's why  
20 we are here. Thank you.

21 THE COURT: Ladies and gentlemen, you have had a long  
22 day and you are going to have a harder and longer day tomorrow.  
23 It's too late for me to start charging you. You can't sit  
24 through an hour and a half charge at this point and listen to  
25 all this esoteric law stuff. Tomorrow morning at 9:45 we will

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1 get you charged and then you will get the case to deliberate.

2 I want to remind you one last time, don't discuss the  
3 case. Keep an open mind. And I especially want to urge you  
4 all to have a very pleasant, stress-free evening this evening.  
5 Don't think about this case. Don't think about this place.  
6 Get a lot of sleep. You are going to work very hard, not that  
7 you have not been all through the trial. You are going to  
8 start working very, very hard indeed tomorrow. Take care of  
9 yourselves. I'll see you in the morning.

10 (Jury not present)

11 MR. MAZUREK: Judge, I have two motions based on the  
12 government's rebuttal summation.

13 The first is a motion for a mistrial on the grounds of  
14 improper argument. The government made lengthy argument in  
15 rebuttal summation based on documents in evidence dating back  
16 to 2010 and 2011, specifically tax returns and the kinds of  
17 prescriptions that were written during that time period. The  
18 government is aware that during that time period that  
19 Dr. Mirilishvili was still on probation based on his prior  
20 medical proceeding and that he was working under completely  
21 different circumstances.

22 We have previously objected to the 2010, 2011 evidence  
23 coming into evidence. We continue to maintain that was  
24 improper to be admitted for the purposes of comparing it to his  
25 practice in 2012 to 2014, especially when the government

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1 presented no evidence at all during trial regarding the  
2 differences in the practices dating back to that time. They  
3 made the argument that he must have known that his income in  
4 2012 to 2014 was illegal drug income because he was making so  
5 little money in 2010 and 2011, full well knowing that his  
6 circumstances were completely different and basing it on no  
7 evidence presented at trial.

8 Secondly, I move to reopen the record to allow us to  
9 offer DM01 and DM02, which are the follow-up visit recordings  
10 of the Lantigua patient visit on the ground that in rebuttal  
11 summation the government made the argument that the fact that  
12 there were no medical records in the file indicated that  
13 Dr. Mirilishvili was not medically treating this patient when  
14 they know that there are in fact multiple additional recordings  
15 and transcripts of all of the subsequent visits between the  
16 doctor and Mr. Lantigua. I believe that they have opened the  
17 door to the request that those recordings be admitted into  
18 evidence in order to complete the record of the medical  
19 diagnosis and treatment that the doctor in fact gave to Jose  
20 Lantigua.

21 THE COURT: From the government.

22 MR. DISKANT: Your Honor, with respect to the first, I  
23 would note that the defendant was the first one to put those  
24 charts up in the defense summation. They were not highlighted  
25 in the government's summation and the government was responding

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1 to the arguments defense counsel was making.

2 THE COURT: Wait a minute. We have got charts and we  
3 have got tax returns. There are two different things. Let's  
4 start --

5 MR. DISKANT: The charts defense counsel put up first  
6 and the government was responding to those.

7 The tax returns is an issue that the government moved  
8 on and the Court ruled on several times before trial allowing  
9 the government to offer them for the point of comparison, which  
10 is precisely the manner which the government offered them in  
11 rebuttal.

12 THE COURT: As to the second motion.

13 MR. DISKANT: As to the second motion, as the Court  
14 has ruled in precluding --

15 THE COURT: I ruled. That was before you closed.

16 MR. DISKANT: With respect to the additional  
17 recordings, the reason, as I understand it, for the Court's  
18 ruling was that they are substantively identical to the  
19 recordings that are in evidence. There is nothing about those  
20 additional recordings that in any way undermine what the  
21 government said in rebuttal or changes it.

22 MR. MAZUREK: Judge, that's not true. In fact, the  
23 additional recordings that we have requested indicate that the  
24 patient gave additional information to the doctor during those  
25 recordings, including the fact that he had followed through on

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1 the doctor's request for an orthopedic referral, that he in  
2 fact saw the orthopedic doctor and had a scheduled surgery  
3 within the next couple of months.

4 The information also indicates in subsequent visits  
5 that Dr. Mirilishvili was responding to the fact that at an  
6 earlier visit that the patient did not follow through on the  
7 referrals. Dr. Mirilishvili in very strong terms said that, in  
8 sum and substance, he's not doing -- that Dr. Mirilishvili is  
9 not treating the patient for the fun of it, that the patient is  
10 wasting his time, and in fact that he strongly said that if you  
11 need to get better, you have to follow through with my  
12 referrals, all the kinds of things --

13 THE COURT: I hear what you are saying and I'm not  
14 unsympathetic to your argument. But how does that undermine  
15 the government's point on the rebuttal summation?

16 I am going to get the transcript and I am going to  
17 reread it, the point being that when you look at the medical  
18 record, there is literally nothing. You can listen to all the  
19 transcripts in the world and there is still literally nothing  
20 written on the medical record.

21 MR. MAZUREK: That's the reason why it's necessary.  
22 In fact, as Dr. Warfield testified, even Dr. Gharibo, looking  
23 at the medical records alone would be insufficient to be able  
24 to judge what in fact Dr. Mirilishvili did. But when they each  
25 reviewed the transcripts they both found that the examination,

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1 in Dr. Gharibo's view, while below what he may have done and  
2 should have been more detailed, was within the standard of  
3 care.

4 The subsequent visits continued to be within the  
5 standard of care because Dr. Mirilishvili did things such as  
6 follow up on the referral, insist on the patient going to those  
7 referring doctors and, in fact, decided to continue the patient  
8 on treatment because the patient informed him deceitfully that  
9 he had a surgery scheduled with the orthopedic doctor who he  
10 said he had seen. All of these things are evidence of in fact  
11 Dr. Mirilishvili acting within the usual course of medical  
12 practice.

13 THE COURT: Let me clarify one thing. The reason they  
14 were not admitted is because the government didn't choose to  
15 introduce them. They were not introducible under the rule of  
16 completeness and from the defendant's perspective they were  
17 hearsay. That's the reason, not because they were  
18 substantively identical.

19 MR. DISKANT: Your Honor, I apologize if I misspoke.  
20 I don't think.

21 THE COURT: Misspoke?

22 MR. DISKANT: Misphrased my answer. The point I was  
23 trying to make in rebuttal, and perhaps it does make sense to  
24 wait for the transcript on this, is that you have heard the  
25 recordings and it is the same thing on all of them, focusing

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1 the jury's attention on all of them being the recordings in  
2 evidence. The government has never told in any substance the  
3 jury about the additional recordings. It has never asked the  
4 jury to rely on them, and I then directed them to the patient  
5 file which, as the Court noted, has nothing in it.

6 THE COURT: I need the transcript of the government's  
7 rebuttal summation.

8 I'll see you in the morning. You are not going to get  
9 a ruling tonight.

10 (Adjourned to Wednesday, March 16, 2016, at 9:30 a.m.)  
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Cross By Ms. Cucinella . . . . .	.1265
Redirect By Mr. Mazurek . . . . .	.1275

DEFENDANT EXHIBITS

Exhibit No.	Received
402-A . . . . .	.1284
403 . . . . .	.1284
606 . . . . .	.1285
607 . . . . .	.1285